

Washington, Tuesday, August 11, 1959

Title 3—THE PRESIDENT

Proclamation 3306

IMPOSING QUOTAS ON IMPORTS OF RYE, RYE FLOUR, AND RYE MEAL

By the President of the United States

of America

A Proclamation

WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), the Secretary of Agriculture advised me that there was reason to believe that rye, rye flour, and rye meal are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective. or materially interfere with, the pricesupport program undertaken by the Department of Agriculture with respect to rye pursuant to sections 301 and 401 of the Agricultural Act of 1949, as amended, or to reduce substantially the amount of products processed in the United States from domestic rye with respect to which such program of the Department of Agriculture is being undertaken; and

WHEREAS, on June 23, 1959, I caused the United States Tariff Commission to make an investigation under section 22 with respect to this matter; and

WHEREAS the Tariff Commission has made such investigation and has reported to me its findings and recommendations made in connection therewith; and

WHEREAS, on the basis of the investigation and report of the Tariff Commission, I find that rye, rye flour, and rye meal, in the aggregate, are practically certain to be imported into the United States under such conditions and in such quantities as to interfere materially with, and to tend to render ineffective, the price-support program with respect to rye, and to reduce substantially the amount of products processed in the United States from domestic rye with respect to which the price-support program is being undertaken; and

WHEREAS I find and declare that the imposition of the quantitative limitations

hereinafter proclaimed is shown by such investigation of the Tariff Commission to be necessary in order that the entry, or withdrawal from warehouse, for consumption, of rye, rye flour, and rye meal will not render ineffective, or materially interfere with, such price-support program; and

WHEREAS I find that the quantitative limitations hereinafter proclaimed will not reduce the permissible total quantity of rye, rye flour, and rye meal entered to proportionately less than 50 per centum of the average annual quantity of rye, rye flour, and rye meal entered during the representative period July 1, 1950, to June 30, 1953, inclusive; and

WHEREAS the allocation of the quotas among foreign supplying countries as hereinafter prescribed will assure an equitable distribution of the imports of rye, rye flour, and rye meal entered hereunder, based upon the proportion of imports for consumption that such foreign countries supplied during the representative period:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by section 22 of the Agricultural Adjustment Act, as amended, do hereby proclaim—

1. That for the period commencing August 5, 1959, and ending August 31, 1959, the total aggregate quantity of rye, rye flour, and rye meal entered shall not exceed 6,741,268 pounds, of which not more than 518 pounds may be in the form of rye flour or rye meal;

2. That for the ten-month period commencing September 1, 1959, and ending June 30, 1960, the total aggregate quantity of rye, rye flour, and rye meal entered shall not exceed 77,399,736 pounds, of which not more than 5,939 pounds may be in the form of rye flour or rye meal;

3. That for the twelve-month period commencing July 1, 1960, and ending June 30, 1961, the total aggregate quantity of rye, rye flour, and rye meal entered shall not exceed an amount determined by the Secretary of the Treasury as soon as practicable after June 30, 1960, to be

(Continued on p. 6409)

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the equivalent of 186,000,000 pounds less the amount, if any, by which entries during the period July 1, 1959, to June 30, 1960, exceeded 186,000,000 pounds: *Provided*, That the amount so determined shall not be less than 92,879,683 pounds, and that of the amount so determined by the Secretary of the Treasury, not more than 0.00806 per centum may be in the form of rye flour or rye meal;

4. That of the 6,741,268 pounds specified in paragraph 1, not more than 6,606,-443 shall be the product of Canada and not more than 134,825 shall be the product of other foreign countries; that of the 77,399,736 pounds specified in paragraph 2, not more than 75,851,741 shall be the product of Canada and not more than 1,547,995 shall be the product of other foreign countries; that of the amount to be determined under paragraph 3, not more than 98 per centum shall be the product of Canada and not more than 2 per centum shall be the product of other foreign countries.

The provisions of this proclamation shall not apply to certified or registered seed rye for use for seeding and crop-improvement purposes, in bags tagged and sealed by an officially recognized seed-certifying agency of the country of production, if—

(a) the individual shipment amounts to 100 bushels (of 56 pounds each) or less, or

(b) the individual shipment amounts to more than 100 bushels (of 56 pounds each) and the written approval of the Secretary of Agriculture or his designated representative is presented at the time of entry, or bond is furnished in a form prescribed by the Commissioner of Customs in an amount equal to the value of the merchandise as set forth in the entry, plus the estimated duty as determined at the time of entry, conditioned upon the production of such written approval within six months from the date of entry.

As used in this proclamation, the term "entered" means "entered, or withdrawn from warehouse, for consumption."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this fourth day of August in the year of our Lord nineteen hundred and [SEAL] fifty-nine, and of the Independence of the United States of America the one hundred and eighty-fourth.

DWIGHT D. EISENHOWER

By the President:

Douglas Dillon,
Acting Secretary of State.

[F.R. Doc. 59-6639; Filed, Aug. 7, 1959; 1:44' p.m.]

RULES AND REGULATIONS

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board
[Regulation Policy Statement 8]

PART 399—STATEMENTS OF GENERAL POLICY

Rescission of Policy Respecting Promulgation of Airworthiness Regulations and of 1958 Transatlantic Charter Policy

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of August 1959.

I. Sections 399.10 and 399.11 of Part 399, adopted May 25, 1955, provided for an annual review and revision of Civil Air Regulations dealing with airworthiness requirements for aircraft and components (§ 399.10) and set forth certain principles that the Board would follow in promulgating such requirements (§ 399.11). The Federal Aviation Act of 1958 has transferred the air safety rulemaking function from the Board to the Administrator of the Federal Aviation Agency. Therefore, the above policy statements relating to promulgation of air safety rules are no longer pertinent and should be rescinded.

II. Section 399.29 of Part 399, adopted January 7, 1958, prescribed the general standards used in processing and deciding applications for exemptions under section 416(b) permitting otherwise unauthorized air carriers to engage in transatlantic passenger charter operations. On May 26, 1959, the Board adopted a new Part 295 which, with certain modifications, converted the Transatlantic Charter Policy into regulatory form. The policy statement set forth in § 399.29 thus has been superseded by the adoption of Part 295 and should be repealed.

Since this rule-making action relates to statements of policy, notice and public procedure hereon are unnecessary, and these rescissions may be made effective upon less than 30 days' notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Subpart B of Part 399 of its Regulations, effective August 5, 1959 by repealing §§ 399.10, 399.11 and 399.29.

(Sec. 204, 72 Stat. 743; 49 U.S.C. 1324. Administrative Procedure Act, sec. 3, 60 Stat. 238; 5 U.S.C. 1002)

By the Civil Aeronautics Board.

[SEAL]

Mabel McCart, Acting Secretary.

[F.R. Doc. 59-6601; Filed, Aug. 10, 1959; 8:49 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Reg. Docket 76; Amdt. 129]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Alterations

The new and revised standard instrument approach procedures appearing hereinafter are adopted to become effective and/or canceled when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures. The Administrator finds that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days' notice.

Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), Part 609 is amended as follows:

1. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for on route operation in the particular area or as set forth below.

Transition				Celling and visibility minimums			
		distance altitu	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine,
From—	_Το				65 knots or less	More than 65 knots	more than 65 knots
rt. Riley Int*	FRI"H"	Direct	2800	T-dn C-dn#_ S-dn-04 A-dn	600-1	300-1 600-1 600-1 1500-2	200-1/4 600-1/4 600-1 1500-2

Procedure turn East side of crs, 207° Outbound, 027° Inbound, 2800′ within 10 mi,
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 031°—1.8 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 1.8 miles after passing FRI "H", climb to 2800′ on a crs of 050° from the "H" within 20 mi.
CAUTION: Restricted area R-197 adjacent to airport northwest.
NOTE: Prior approval must be obtained from the Commanding Officer for use of this facility.
*Int V-4 & R-320 EMP VOR.
*All circling approaches will be made to the East of the circost. Secontion pate.

#All circling approaches will be made to the East of the airport. See caution note.

City, Fort Riley; State, Kans.; Airport Name, Marshall AAF; Elev., 1062'; Fac. Class, H; Ident., FRI; Procedure No. 1, Amdt. 1; Eff. Date, 29 Aug. 59; Sup. Amdt. No. Orig.; Dated, 1 Aug. 59

				T-d T-n C-d C-n A-dn	2000-2 1500-2 2000-2	1000-2 2000-2 1500-2 2000-2 2500-2	
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Procedure turn W side of crs, 004° Outbud, 184° Inbud, 4000' within 10 mi.

Minimum altitude over facility on final approach crs, 3000'.

Crs and distance, facility to airport, 184—3.8.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, within 3.8 mi, climb to 5000' on crs of 184 within 10 mi of Lebanon H facility.

ARCABRIER Notes: Operations on Runway 7 not authorized at night. Runway 25 authorized at night for take-off only. Sliding scale N.A. No reduction in landing visibility minimums authorized for local conditions. No reduction in take-off minimums authorized. City, Lebanon; State, N.H.; Airport Name, Lebanon Municipal; Elev., 580'; Fac. Class, BH; Ident., LEB; Procedure No. 1, Amdt. 3; Eff. Date, 29 Aug. 59; Sup. Amdt. No. 2; Dated, 1 Apr. 54

2. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part;

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition			Ceiling and visibility minimums				
From—	То	Course and distance	Minimum altitude (feet)	Condition		or less More than 65 knots	More than 2-engine, more than 65 knots
Albany LFR	ABY-VOR	Direct	1600	T-dn C-dn S-dn-16 A-dn	300-1 500-1 500-1 800-2	300-1 500-1 500-1 800-2	*300-1 500-1/2 500-1 800-2

Radar transition altitude, 000° thru 360°, 1600' within 25 miles. All bearings and distances are from radar antenna site with sector azimuths progressing clockwise. Radar control must provide 3 miles or 1000' vertical separation; or 3 to 5 miles and 500' vertical separation from the following towers: 719' MSL 22 miles WNW, 1362' MSL 20 miles

5. Procedure turn W side crs, 333° Outbnd, 153° Inbnd, 1500' within 10 mi. Minimum altitude over faellity on final approach crs, 1100'. Crs and distance, facellity to airport, 153—5-1. If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.1 mi, climb to 1500' on R-172 within 20 mi of ABY-VOR. *200-3/2 authorized for takeoff Runway 3-21 only.

City, Albany; State, Ga.; Airport Name, Municipal; Elev., 196'; Fac. Class, BVOR; Ident., ABY; Procedure No. 1, Amdt. 8; Eff. Date, 15 Aug. 59; Sup. Amdt. No. 7; Dated, 15 Aug. 59

Austin RBn	AUS-VOR (Final)	Direct Direct	T-dn C-dn S-dn-16R	400-1 400-1	300-1 500-1 400-1	*300-1 500-11/2 400-1
	-	1	A-dn		800-2	800-2

Radar terminal area maneuvering altitude within 20 mi and clockwise around AUS radar antenna site: 345° to 215°—2000'; 215° to 345°—2500'.

Radar control must provide 3 mi or 1000' vertical separation; or 3 to 5 mi and 500' vertical separation from radio towers 1680' msl 23 mi WNW, 2049' msl 9 mi NW and 1054' msl 14 mi N.

nsl 14 mi N.

Procedure turn W side crs, 355° Outbnd, 175° Inbnd, 2000' within 10 mi. Beyond 10 mi NA.

Minimum altitude over facility on final approach crs, VOR 1600'; AUS FM or DME fix 2.4 on R-175 AUS VOR 1300'**.

Crs and distance, facility to airport, 175—4.9 VOR to airport; 175—2.5 from 2.4 DME fix to airport.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.9 mi, turn right, climb to 3000' on R-189 within 15 mi or, when directed by ATC, turn left, climb to 2000' on R-125 within 20 mi,

CAUTION: Tank 355' MSD 1.2 mi W final approach crs 2.3 mi NW of airport.

*200-2½ authorized on Runways 16R, 34L, 12R, and 30L only,

**Descent below 1300 authorized only after passing AUS FM, DME fix 2.4 on R-175.

City, Austin; State, Tex.; Airport Name, Mueller; Elev., 631'; Fac. Class, BVOR; Ident., AUS; Procedure No. 1, Amdt. 9; Eff. Date, 29 Aug. 59; Sup. Amdt. No. 8; Dated, 18 Jan. 58

VOR STANDARD INSTRUMENT APPROACH PROCEDURE-Continued

Transition				Ceiling and visibility minimums			
From-	То—	Course and distance	Minimum altifude (feet)	Condition	2-engine or less		More than
					65 knots or less	More than 65 knots	2-engine, more than 56 knots
Blythe LFR	BLH VOR	Direct	3100	T-d T-n C-dn A-dn	100-1 800-2 1100-2 1100-2	500-1 800-2 1100-2 1100-2	500-1 800-2 1100-2 1100-2

Procedure turn S side of crs, 212° Outbud, 032° Inbud, 3100′ within 10 mi.

Minimum altitude over facility on final approach crs, 2300′.

Crs and distance, facility to airport, 032°—1.9 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 1.9 miles, make right climbing turn to 5000′ on R-156 within 20 mi of VOR.

CAUTION: 1160′ MSL terrain 2 mi WNW of airport and rising rapidly to 3100′.

NOTE: Provisions for reductions in visibility minimums NA.

City, Blythe; State, Calif.; Airport Name, Municipal; Elev., 397'; Fac. Class, VOR; Ident., BLH; Procedure No. 1, Amdt. Orig.; Eff. Date, 29 Aug. 59

3. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibility which are in statute miles. If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition			Ceili	ng and visib	ility minimu	ims	
	То—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine.
From—					65 knots or less	More than 65 knots	1
Morton Int	Fairview Int*	Via RADAR Vector	2000	T-dn C-dn S-dn-32R A-dn	390-1 400-1 400-1 800-2	300-1 500-1 400-1 800-2	200-14 500-112 400-1 800-2

Radar transition to final approach crs authorized. Aircraft will be released for final approach without procedure turn on inbnd approach crs, inbnd to Fairview Int. Refer to O'Hare radar procedure is detailed information on sector altitudes is desired. Arrival radar at O'Hare and departure radar at Midway must be operative. Procedure turn NA. All maneuvering to VOR final approach crs, R-131 ORD, must be under ORD ASR control. Minimum altitude over *Fairview Int on final approach crs, 2000'. Crs and distance, *Fairview Int to Rny 32R, 311'-4.0 mi. Crs and distance, breakoff point to Rny 32R, 318'--1.0 mi. If visual contact not established upon descent to authorized landing minimums or if landing not accomplished make immediate right turn, climb to 2500' and proceed to OBK VOR via OBK R-170 or, when directed by ATC, (1) climb to 3500', proceed to Spring Lake Int via ORD R-300; (2) climb to 2500', proceed to ORD LOM.

*Fairview Int: Int R-051 API VOR and R-131 ORD VOR.

City, Chicago; State, Ill.; Airport Name, O'Hare Int'l.; Elev., 666'; Fac. Class, VOR; Ident, ORD; Procedure No. TerVOR-32R, Amdt. Orig.; Eff. Date, 29 Aug 59

	C-dr S-dn	n 300-1 n 400-1 n-5 400-1 n 800-2	300-1 500-1 400-1 800-2	200-14 500-14 400-1 800-2
--	--------------	--	----------------------------------	------------------------------------

Procedure turn S side of crs, 230° Outbnd, 050° Inbnd, 1500′ within 10 miles.

Minimum altitude on final approach ers until passing OZR R-106, 900′*.

Crs and distance, OZR R-106 to Rny 5, 050°-3.7 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile, climb to 1500′ on R-050 within 20 miles.

*If OZR R-106 is not received, descent below 900′ NA.

City, Dothan; State, Ala.; Airport Name, Municipal; Elev., 330'; Fac. Class, BTVOR; Ident., DHN; Procedure No. TerVOR-5, Amdt. 1; Eff. Date, 29 Aug. 59; Sup. Amdt. No. Orig.; Dated, 11 Feb. 56

Abram* Int or 4 mi radar fix	VOR	012-4.0	**1000	T-dn C-dn**	390-1 490-1	300-1 500-1	200-14 500-14
•			,	S-dn-35** A-dn	400-1 800-2	400-1 800-2	400-1 800-2

Radar transition altitude within 20 mi radius of radar site 2000' MSL. Radar control must provide 3 mi or 1000' vertical separation; or 3 to 5 mi and 500' vertical separation from radio towers: 2349' MSL 15 mi SSE. 1743' MSL 12 mi WSW, 1221' MSL 6 mi N.

Procedure turn #W side of crs, 192° Outbnd, 012° Inbnd, 2000' within 10 mi.

Facility on airport.

Minimum altitude over facility on final approach crs, **1000'.

Ors and distance, breakoff point to approach end of Rnwy 35, 350°—.092 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished after passing VOR, turn left, climbing to 2000' on ACF

R-310 within 20 mi or, when directed by ATC, turn left, climb to 2000' to Hurst Int via ADS R-230.

**Int ACF VOR R-192 and DAL VOR R-226.

**If Abram Int of 4 mile radar fix not received, descent below 1200' NA and celling minimum is 600'.

#Procedure turn nonstandard due obstruction.

City, Fort Worth; State, Tex.; Airport Name, Amon Carter; Elev., 568'; Fac. Class, VORTAC; Ident., ACF; Procedure No. TerVOR-35, Amdt. 2; Eff. Date, 29 Aug. 59; Sup. Amdt. No. 1; Dated, 20 June 59

RULES AND REGULATIONS

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE-Continued

Transition				Ceiling	and visibili	ty minimum	s
		C	Minimum		2-engine or less		More than
From—	То	Course and distance	altitude (feet)	Condition .	65 knots or less	More than 65 knots	2-engine, more than 65 knots
LaGuardia LFR	IDI-VOR IDI-VOR (Final) IDI-VOR IDI-VOR IDI-VOR	Direct	1500 1000 1500 1500 1500	T-dn C-dn S-dn-22R A-dn	300-1 600-1 600-1 800-2	300-1 600-1 600-1 800-2	200-1/2 600-1/2 600-1 800-2

Terminal Area Radar Transition Altitudes: All directions 2500' within 25 miles; E of the NE-SW crs of the LaGuardia LFR, 1500' within 15 miles.

Procedure turn #E side of crs, 034° Outbud, 214° Inbud, 1500' within 10 miles.

Minimum altitude over Elmont FM on final approach crs, 1000'; over VOR, 600'.

Crs and distance, Elmont FM to VOR, 214°—5.9 mi.

Crs and distance, breakoff point to app end rny 22, 223—0.4.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 miles, climb to 1500' on R-223 and proceed to Scotland . Contact Idlewild Approach Control. #Procedure turn conducted E to avoid LaGuardia traffic. Int.

City, New York; State, N.Y.; Airport Name, International; Elev., 12'; Fac. Class, VOR; Ident., IDL; Procedure No. TerVOR-22, Amdt. 5; Eff. Date, 29 Aug. 59; Sup. Amdt. No. 4; Dated, 11 May 57

Decoto Int	Fremont FM HW Fremont FM HW Fremont FM HW	Direct	4000 6000 4000	T-dn C-dnA-dn.	500-1	300-1 600-1 800-2	#200-1/2 600-11/2 800-2
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Standard procedure turn NA. All maneuvering and descent shall be accomplished in the Fremont** FM-HW LFR holding pattern. Minimum altitude 4000'. Descent to 3500' authorized to cross Fremont FM-HW on final approach crs. Inbnd.

Minimum altitude over facility on final approach crs. 500'%. Descent to airport minimums authorized after passing Mt. Eden Int.

It visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 miles, climb to 2000' in a one-minute right turn holding pattern on R-300 (120° Inbnd, 300° Outbnd). All turns West side of crs.

NOTES: Missed or discontinued approach must not cross OAK VORTAC above 1500'. ADF and VOR, or dual VOR equipment required for this procedure.

5300-1 required for takeoff on Rnwy 33.

"Int OAK VORTAC R-120 and 047° brng to Hayward RBn, or Int o OAK VORTAC R-120 and SFO TVOR R-066.

"Fremont FM/HW or Int of OAK VORTAC R-120 and SFO TVOR R-083.

5000' required for aircraft with stall speed more than 65 knots.

City, Oakland; State, Calif.; Airport Name, Met. Oakland Int'l; Elev. 5'; Fac. Class, H-BVORTAC; Ident, OAK; Procedure No. TerVOR (R-120), Amdt. 2; Eff. Date, 29 Aug. 59; Sup. Amdt. No. 1; Dated, 25 July 59

PROCEDURE CANCELLED, EFFECTIVE 8 AUGUST 1959. SUPERSEDED BY VOR-ARD PROC. NO. 1, ORIG., EFFEC. 8 AUGUST 1959. City, Trenton; State, N.J.; Airport Name, Mercer County; E.ev., 213': Fac. Class, VOR; Ident., TTN Procedure No. TevVOR-6, Amdt. 1; Eff. Date, 11 May 57; Sup. Amdt. No. Orig.; Dated, 17 Dec. 55

4. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling	and visibili	ty minimum	8
		Course and	Minimum	-	2-engine or less		More than
From—	To	distance	altitude (feet)	Condition	65 knots or less	More than 65 knots	2-engine, more than 65 knots
Norris Int Rutledge Int Pledmont Int Rasur Int Tal assee Int London Int Clinton Int	VOR VOR VOR VOR VOR VOR VOR VOR	Direct	3500 3000 5000	T-dn C-dn S-dn-22R A-dn	500-1 600-1 600-1 800-2	500-1 600-1 600-1 800-2	400-1 600-114 600-1 800-2

Radar Terminal Area Transition Altitudes: 0-360° within 5 ml, 2500'; 091°-179° within 10 mi, 4000'; 180°-090° within 10 mi, 2500'; 158°-205° within 17 mi, 5000'; 355°-070° within 17 mi, 3000'; 205°-270° within 24 mi, 2500', 355°-070° within 25 mi, 3100'.

All bearings and distances are from the Radar Antenna Site with sector azimuths progressing clockwise.

Procedure turn East side of crs, 045° Outband, 225° Inband, 3000' within 10 mi.

Minimum altitude on final approach crs until passing TYS-VOR R-135, 3000'.

Crs and distance, TYS R-135 to Rny 22R, 225° —6.8 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb straight ahead to 4000' on SW crs ILS to LOM or, when directed by ATC, turn right, climb to 3000' on TYS VOR R-248 to Loudon Int.

City, Knoxville; State, Tenn.; Airport Name, McGhee-Tyson; Elev., 989'; Fac. Class, ILS; Ident., TYS; Procedure No. ILS-22R, Amdt. Orig.; Eff. Date, 29 Aug. 59

PROCEDURE CANCELLED, EFFECTIVE 1 AUGUST 1959, DUE TO REMOVAL OF ILS FOR RELOCATION.

City, New York; State, N.Y.; Airport Name, International; Elev., 12'; Fac. Class, ILS; Ident, IWY; Procedure No. 2, Amdt. 2; Eff. Date, 11 May 57; Sup. Amdt. No. 1; Dated, 2 Mar. 57

These procedures shall become effective on the dates indicated on the procedures

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on July 24, 1959.

B. PUTNAM, Acting Director, Bureau of Flight Standards.

[F.R. Doc. 59-6248; Filed, Aug. 10, 1959; 9:29 a.m.]

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

SUBCHAPTER C—REGULATIONS AND STAND-ARDS UNDER THE FARM PRODUCTS INSPEC-TION ACT

PART 55—GRADING AND INSPEC-TION OF EGG PRODUCTS

Miscellaneous Amendments

Notice of a proposed amendment to the regulations governing the grading and inspection of egg products (7 CFR Part 55) was published in the FEDERAL REGISTER on July 3, 1959 (24 F.R. 5421). The amendment hereinafter promultated is pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U.S.C. 1621 et seq.).

The amendment requires as a condition to performing inspection service on egg products which are produced in nonofficial plants that laboratory analyses are to be made in addition to the organoleptic examination. Minor changes are made in the processing requirements for certain blends of egg products; recording thermometers are not required on egg driers; and the official identification and rejection of application provisions are modified. The amendment hereinfater set forth is essentially the same as was published in the aforesaid notice.

After consideration of all relevant material presented, the amendment hereinafter set forth is promulgated to become effective thirty (30) days after publication in the Federal Register.

The amendment is as follows:

§ 55.2 [Amendment]

1. Add a new paragraph (dd) to § 55.2 to read:

(dd) "Stabilization" means the subjection of any egg product to a desugaring process.

2. Change § 55.24 to read:

$\S 55.24$ When application may be rejected.

Any application for grading service, inspection service, or sampling service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations prescrib-

ing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the act; (c) where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the act or was responsible in whole or in part for the current denial of the benefits of the act to any person; (d) where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the act to obtain grading or inspection service; (e) whenever the applicant, after an initial survey has been made in accordance with § 55.23(a), fails to bring the plant, facilities, and operating procedures into compliance with the regulations within a reasonable period of time: (f) notwithstanding any prior approval whenever, before inauguration of service. the applicant fails to fulfill commitments concerning the inauguration of the service; (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application. Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

3. Change § 55.36 to read:

§ 55.36 Form of official identification symbol and inspection mark.

(a) The shield set forth in Figure 1 shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with a product shall be deemed to constitute a representation that the product has been officially inspected for the purposes of § 55.2a.

(b) The inspection mark which is permitted to be used on egg products, other than those prepared in accordance with §§ 55.39 and 55.40, shall be contained within the outline of a shield and with the wording and design set forth in Figure 2 of this section, except that the lot number may be applied to the container other than within the inspection mark, and in such instances the inspection mark shall be in the form and design as indicated in Figure 3 of this section. The plant number may be applied to the container other than within the inspection mark.

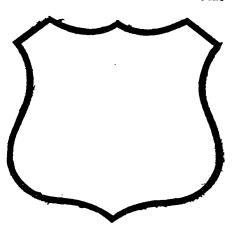


FIGURE 1.



FIGURE 2.



FIGURE 3.

4. Change § 55.41 to read:

§ 55.41 Products not eligible for official identification.

Egg products which are prepared in nonofficial plants shall not be officially identified. However, such products may be inspected organoleptically and by laboratory analyses and covering certificates issued setting forth the results of the inspection. Such certificatés shall apply only to samples examined and shall include a statement that the product was produced in a nonofficial plant. Frozen whole eggs will be drilled and examined organoleptically and if the product appears to be satisfactory, samples will be taken for laboratory analyses. The samples will be examined for direct microscopic count and the presence of acetic acid. Frozen whole eggs shall be considered unsatisfactory if they have a direct microscopic bacteria count of 5 million or more per gram of frozen whole egg; or contain acetic acid in any measurable quantity.

§ 55.79 [Amendment]

5. Add a new subdivision (vii) to paragraph (g) (4) of § 55.79 to read:

(vii) Any eggs that are adulterated as such term is defined pursuant to the Federal Food. Drug and Cosmetic Act.

§ 55.85 [Amendment]

- 6. Change paragraph (d) of § 55.85 to read:
- (d) Egg products containing 32 percent or more egg solids, to which 10 percent salt has been added, may be accumulated up to 3 hours at a temperature not exceeding 60° F., for the purpose of equalizing salt, fat and color, provided that immediately thereafter, the product is packaged and placed in a freezer. All other liquid egg held for shipment in liquid form for drying, stablization or pasteurization, or which is not moved directly into a freezer shall be cooled to 45° F. within 11/2 hours from the time of breaking and maintained at temperatures not exceeding 45° F. until loaded for shipment, or until stabilizing or pasteurizing operations are begun, or until frozen or dried, or delivered to the consumer. Such liquid eggs, if to be held for more than 8 hours, shall be reduced to a temperature of less than 40° F. within 11/2 hours from time of breaking and held at that temperature or less until stabilizing or pasteurizing operations are begun, or until dried, or frozen, or delivered to the consumer.

§ 55.91 [Amendment]

- 7. Change paragraph (c) of § 55.91 to read:
- (c) Driers shall be equipped with approved air intake filters.

(Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624; 19 F.R. 74)

Issued at Washington, D.C. this 6th day of August 1959.

Roy W. Lennartson, Deputy Administrator, Agricultural Marketing Service.

[F.R. Doc. 59-6594; Filed, Aug. 10, 1959; 8:48 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 1003—DOMESTIC DATES PRO-DUCED OR PACKED IN DESIGNATED AREA OF CALIFORNIA

Establishment of Free, Restricted, and Withholding Percentages for 1959— 60 Crop Year

Notice was published in the July 25, 1959, issue of the Federal Register (24 F.R. 5968) that consideration was being given to a proposal to establish for the 1959-60 crop year beginning August 1, 1959, free, restricted, and withholding percentages for marketable dates of the Deglet Noor, Zahidi, and Khadrawy varieties. The establishment of such percentages is in accordance with the applicable provisions of Marketing Agreement No. 127, as amended, and Order No. 103, as amended (7 CFR Part 1003), regulating the handling of domestic dates produced or packed in a designated area of California. The said marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The percentages proposed in the notice were recommended by the Date Administrative Committee, established under the marketing agreement and order.

In said notice, interested persons were afforded the opportunity to file with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, written data, views, or arguments with respect to the proposal. No such comment was received within the prescribed time.

After consideration of all relevant matters presented pertaining to the proposal, including the information and recommendation of the Date Administrative Committee, the aforesaid notice and other available information, it is hereby found that to establish as the free percentages, restricted percentages, and withholding percentages those proposed in the aforesaid notice will tend to effectuate the declared policy of the aforesaid act.

Therefore, it is ordered, That the free, restricted, and withholding percentages of marketable dates for the 1959-60 crop year are hereby established as follows:

§ 1003.207 Free, restricted, and withholding percentages.

The free percentage, restricted percentage, and withholding percentage of marketable dates for each variety shall be, for the crop year beginning August 1, 1959, and ending July 31, 1960, as follows: (a) Deglet Noor variety dates: Free percentage, 73 percent; restricted percentage, 27 percent; and withholding percentage, 37 percent; (b) Zahidi

variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding percentage, 0 percent; and (c) Khadrawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding percentage, 0 percent.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the Federal Register (5 U.S.C. 1001-1011) in that: (1) The 1959-60 crop year began on August 1, 1959, and the aforesaid percentages are applicable, as required by the amended marketing agreement and order, to all dates subject to volume regulation on and after that date; (2) since the free, restricted, and withholding percentages established for the 1958-59 crop year for the Deglet Noor variety of dates continue to apply in the 1959-60 crop year until the percentages for such crop year, which are hereby established at different levels, become effective, it is necessary that the percentages for the 1959-60 crop year become effective as soon as possible so as to minimize adjustments; and (3) handlers are aware that the percentages hereby established were proposed for the 1959-60 crop year and they need no additional advance notice for compliance under this regulation. In these circumstances, this regulation should be made effective upon publication in the Fer-ERAL REGISTER.

(Secs. 1-19, 4 8 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 6, 1959, to become effective upon publication in the Federal Register.

FLOYD F. HEDLUND, Acting Director, Fruit and Vegetable Division.

[F.R. Doc. 59-6614; Filed, Aug. 10, 1959; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army SUBCHAPTER C—MILITARY EDUCATION

PART 543—PROMOTION OF RIFLE PRACTICE

National Board for Promotion of Rifle Practice and Office of Director of Civilian Marksmanship

Section 543.4 is revised to read as follows:

- § 543.4 National Board for the Promotion of Rifle Practice and Office of the Director of Civilian Marksmanship.
- (a) General. Title 10, United States Code, sections 4307 through 4313, imposes an obligation upon the Secretary of the Army to promote marksmanship

training with military-type individual small arms among able-bodied citizens of the United States and within the limits of available funds to provide citizens outside the active services of the Armed Forces of the United States with means whereby they may become proficient in the use of such arms. This obligation is fulfilled on behalf of the Secretary of the Army by the National Board for the Promotion of Rifle Practice (NBPRP) and its implementing agency, the Office of the Director of Civilian Marksmanship. The Assistant Secretary of the Army (Financial Management) is presently required by the Secretary of the Army to be president of the Board and in that capacity acts for the Secretary of the Army concerning the activities relating to the program of the Board, including approval of expenditures by the Board.

(b) Mission. Under the authority set forth in paragraph (a) of this section, the principal mission of the National Board for the Promotion of Rifle Practice is to promote among able-bodied citizens not reached through training programs of the active components of the Armed Forces of the United States. practice in the use of military-type individual small arms; to promote matches and competitions in the use of such arms; and to issue in connection therewith necessary arms, ammunition, targets, and other necessary supplies and appliances; and to procure and award to winning competitors trophies, medals, badges, and other insignia. In the execution of this mission the Board is charged with encouraging and supporting small arms target practice throughout the United States and the Commonwealth of Puerto Rico, for the purpose of training the citizenry in the use of military-type individual small arms, particularly to the end that those individuals who may be called upon to serve in time of war will be qualified as finished instructors and marksmen, and to create a public sentiment which emphasizes the necessity of marksmanship training with military-type individual small arms as a means of national de-

(c) Composition. The National Board for the Promotion of Rifle Practice will consist of not less than 21 members or more than 25 members, to be appointed by the Secretary of the Army from time to time, from the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Reserve components of the Armed Forces of the United States, the National Rifle Association of America, the Selective Service System, and the country at large.

(d) Members to serve without compensation. Members will serve without compensation as such, other than reimbursement of necessary authorized expenses.

(e) Executive committee. (1) An executive committee consisting of not less than three members of the Board will be appointed by the president at the first meeting of the Board each year. This committee will serve for 1 year. The representative of the Deputy Chief of Staff for Military Operations, Depart-

ment of the Army, on the board, normally will be chairman of the committee.

(2) The committee will, during such times as the Board is not in session, act for the Board on all matters referred to it and its action, when approved by the president, will become binding on the Board.

(f) Budget committee. (1) A budget committee consisting of not less than three members of the Board will be appointed by the president at the first meeting each year.

(2) The committee will advise the executive officer in the preparation and defense of budget requests for "National Board for the Promotion of Rifle Practice, Army", and as otherwise required concerning budgetry matters pertaining to activities of the National Board for the Promotion of Rifle Practice.

(g) Expenditure projects. Expenditures of funds will be made only in accordance with expenditure projects prepared by the executive officer with the advice of the budget committee in accordance with law and regulations and approved by the president.

(h) Executive officer. (1) The executive officer normally will be a commissioned officer of the Army selected by the president.

(2) He will be recorder of the Board and, under the direction of the president, will:

(i) Conduct its detailed business;

(ii) Make all contracts and agreements covering the expenditure of public funds, in accordance with law and regulations;

(iii) With advice of the budget committee of the Board, prepare and defend the annual requests of the Board for appropriations which are necessary to accomplish the duties charged to the Board; appear before Budget Advisory Committee of the Army; Comptroller, Department of Defense; Bureau of the Budget, and Congressional Committees on Appropriations:

(iv) Make recommendations to the president of the Board relative to policies of the Board:

(v) Act as Chairman of the National Match Fund Council;

(vi) Arrange for award of trophies and medals in marksmanship competitions sponsored by the Board; and

(vii) Coordinate National Match planning.

(i) Logistical support. The Active Army will provide, within the limits of available funds, logistical support for this program through supply and service activities and Department of the Army stocks in accordance with availability and the established supply and pricing policy. This program is funded for through separate appropriations, the budget estimates for which are prepared by the National Board for the Promotion of Rifle Practice.

(j) Meetings. The Board will hold two meetings annually for the transaction of such business as may properly come before it. These meetings will be held at such times and places as may be directed by the president of the Board.

(k) Government of the Board. (1) Robert's Rules of Order will be authority

for the governing and regulating of all meetings of the NBPRP.

(2) Proxies will not be allowed in either meetings of the Board or meetings of regularly appointed committees of the Board.

(3) The president of the Board and the Executive Officer will be ex-officio members of all committees of the Board.

(4) In the absence of the president of the Board from a meeting, a chairman pro tem will be elected from those members present to serve for that session only.

(I) Director of Civilian Marksmanship. (1) Title 10, United States Code, section 4307, authorizes the President to detail an officer of the Army or Marine Corps as Director of Civilian Marksmanship (DCM). The Office of the Director of Civilian Marksmanship is the implementing agency for the National Board for the Promotion of Rifle Practice. The DCM is responsible for implementing the policies established by the Board as approved by the president for the Secretary of the Army. The executive officer of the NBPRP may also be the Director of Civilian Marksmanship.

(2) Under the direction of the NBPRP, and as provided in pertinent Department of the Army regulations, the Director of Civilian Marksmanship is responsible for:

(i) Initiating, developing, coordinating, and recommending appropriate actions on matters pertaining to:

(a) Organization of civilian rifle clubs:

(b) Procedure and policy governing the enrollment of civilian clubs and schools in the civilian marksmanship program fostered by the NBPRP and implemented by the DCM.

(c) Policies and procedures governing the issue or sale to civilians of rifles, ammunition, targets, and other supplies and materials required in the conduct of small arms marksmanship training;

(d) Bonding of clubs and schools to which Government property is issued on a loan basis;

(e) Proper accountability of property issued to civilian rifle clubs and schools;

(f) Policies and procedures governing award of marksmanship qualification badges, medals, trophies, provided by the NBPRP in execution of the programs of marksmanship training and competitions fostered by the Board; and

(g) Requests of schools and authorized civilian organizations to use Government-owned rifle ranges at military installations throughout the United States.

(ii) Conducting a continuing review of major policies of the NBPRP as related to those of the National Rifle Association (NRA), to insure proper corelation between the two organizations on matters pertaining to nationwide civilian marksmanship training program fostered by the NBPRP and executed in collaboration with the NRA.

[AR 920-15, July 16, 1959] (Sec. 4308, 70A Stat. 236, 10 U.S.C. 4308)

R. V. Lee, Major General, U.S. Army, The Adjutant General.

[F.R. Doc. 59-6577; Filed, Aug. 10, 1959; 8;45 a.m.]

No. 156-2

Chapter VI—Department of the Navy

SUBCHAPTER C-PERSONNEL

PART 725—DISPOSITION OF CASES INVOLVING PHYSICAL DISABILITY

Revision of Part

Scope and purpose. Part 725 is revised to substitute the pertinent contents of the Disability Separation Manual as recently promulgated by the Secretary of the Navy for the old text of the part which was based on Chapter IX of the 1955 Naval Supplement to the Manual for Courts-Martial. Chapter IX was canceled with the promulgation of the new Disability Separation Manual.

1. Part 725 is revised to read as follows:

Subpart A-Background, Purpose and Policy

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725, 101	Background.
725.102	Purpose.
725. 103	Policy.

725.201 Definitions.

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Secretary.

Officer.

725. 202

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725.208	Grade.
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725. 211	Reserve component.
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725. 213	Physical disability.
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725.223	Reasonable doubt.
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725.225	Active duty for a period of more
	than 30 days.
725.226	Inactive duty training.
725.227	Recommendations not considered
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725.404	Jurisdiction of boards.
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725.406	Limitations on medical members.
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Recommended findings, members on active duty for more than 30 days other than for training un-

der 10 U.S. Code 270(b).
725.426 Recommended findings, members on active duty for 30 days or less or on training duty under 10 U.S. Code 270(b).
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ing under 10 U.S. Code 6331.
725.430 Recommended findings, reevaluation of members on temporary disability retired list.

725.431 Recommended findings, retired member on active duty. 725, 432 Miscellaneous cases.

725.433 Minority report.

725.434 Action prior to final adjournment.

725.435 Rebuttal.

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AUTHORITY: §§ 725.101 to 725.907 issued under sec. 6011, 70A Stat. 375; 10 U.S.C. 6011. Interpret or apply sec. 15, 56 Stat. 367, as amended, sec. 104, 68A Stat. 30, secs. 266, 270, 1004, 1163, 1201-1221, 1372, 1373, 1554, 6148, 6331, 6485, 70A Stat. 11, 79, 89, 91-100, 105, 383, 397, 417 as amended; 37 U.S.C. 115, 26 U.S.C. 104, 10 U.S.C. 266, 270, 1004, 1163, 1201-1221, 1372, 1373, 1554, 6148, 6331, 6485.

Subpart A-Background, Purpose and Policy

§ 725.101 Background.

Disability retirement pay and severance pay provided by 10 U.S.C. Chapter 61 are benefits provided for members who, if otherwise qualified, become unfit to perform duty because of physical disability while on active duty, or inactive duty training. Such benefits are not provided for members or former members of the military services who after discharge or release from active duty or inactive duty training may become unfit to perform their duties because of physical disability even though the origin of the disability may be related to a period of active duty or inactive duty training. Individuals who, during active service, incur disabilities which impair their earning capacity for civil occupations but do not preclude performance of full military duties may be eligible for compensation under laws administered by

the Veterans Administration even though they do not qualify for disability retirement or severance pay.

§ 725.102 Purpose.

The purpose of these regulations is to prescribe the administrative procedures and policies to be followed in implementing laws pertaining to discharge or retirement of members from the naval service by reason of physical disability.

§ 725.103 Policy.

- (a) It is the policy of the Navy Department that laws pertaining to physical disability retirement or separation be administered fairly, equitably, and with due regard for the interest of both the individual and the Government. Although these laws should be so administered as to protect the U.S. Government from assuming unwarranted responsibility for payment of disability and retirement benefits, reasonable doubt as to the entitlement of a member to such benefits will be resolved in favor of the individual.
- (b) The fact that a member is determined to be unfit for duty while on active duty is not sufficient to entitle him to disability retirement or severance pay. There must be a medical conclusion that this unfitness is due to a disability incurred while entitled to receive basic pay. The fact that such member was accepted physically for active duty is not conclusive that the disability was incurred after such acceptance. It is one piece of evidence to be considered with all of the medical evidence. In addition to and in conjunction with all pertinent medical evidence, due consideration and weight must be given to accepted medical principles authenticated by medical authorities in arriving at a final determination of this medical conclusion. It is not proper to exclude such accepted medical principles in making the aforesaid determinations even in cases where there is no other evidence that the disability existed prior to entrance upon active duty.

(c) The foregoing does not apply to policies with respect to aggravation of a disability, when such disability was incurred prior to entry on active duty. In applying the policies with respect to aggravation, however, due consideration will be given to the length of service particularly where the period is in excess of eight years of active duty.

Subpart B—Definitions and Interpretations

§ 725.201 Definitions.

For the purpose of this part the definitions and interpretations set forth in this subpart will apply.

§ 725.202 Secretary.

"Secretary," unless otherwise qualified, refers to the Secretary of the Navy.

§ 725.203 Member.

"Member," unless otherwise qualified, means a commissioned officer, commissioned warrant officer, warrant officer and enlisted person including a retired person of the naval service. The words "retired person" include members of the Fleet Reserve and Fleet Marine Corps

Reserve who are in receipt of retainer pay. Midshipmen of the Navy are not members.

§ 725.204 Officer.

"Officer" means a commissioned or warrant officer.

§ 725.205 Commissioned officer.

"Commissioned officer" is a member of the naval service having the grade of commissioned warrant officer or above.

§ 725.206 Warrant officer.

"Warrant officer" is a member who holds a commission or a warrant in a warrant officer grade.

§ 725.207 Enlisted member.

"Enlisted member" is a person in an enlisted grade.

§ 725.208 Grade.

"Grade" is a step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation.

§ 725.209 Rank.

"Rank" is the order of precedence among members of the armed forces.

§ 725.210 Rating.

"Rating" is the name (such as Boatswain's Mate) prescribed for enlisted members of the naval service in an occupational field.

§ 725.211 Reserve component.

"Reserve component" means either the U.S. Naval Reserve or the U.S. Marine Corps Reserve.

§ 725.212 Party.

"Party" means the individual whose case is being considered.

§ 725.213 Physical disability.

- (a) "Physical disability" is any manifest or latent impairment of function due to disease or injury regardless of the degree of impairment. The term physical disability does not include such inherent defects as behavior disorders, personality disorders, primary mental deficiency, congenital or developmental defects, or developmental refractive errors of the eye.
- (b) Impairment of function is any lessening or weakening of the capacity of the body or any of its parts to perform that which is considered by accepted medical principles to be the normal activity in the bodily economy.
- (c) Manifest impairment is that which is accompanied by signs and/or symptoms.
- (d) Latent impairment is that which is not accompanied by signs and/or symptoms but which is of such a nature that there is reasonable and moral certainty according to accepted medical principles that signs and/or symptoms will appear within a reasonable period of time.

§ 725.214 Accepted medical principles.

"Accepted medical principles" are fundamental deductions consistent with medical facts and based upon the observation of a large number of cases. To constitute an accepted medical principle

the deduction must be so reasonable and logical as to create a moral certainty that it is correct.

§ 725.215 Unfit because of physical disability.

- (a) A member is unfit because of physical disability when he is unable, because of physical disability, to perform the duties of his office, rank, grade or rating in such a manner as to reasonably fulfill the purpose of his employment on the active list.
- (b) A party before a physical evaluation board is presumed fit and physically qualified to perform the duties of his office, rank, grade, or rating. However, a party who has either a manifest or latent impairment which is likely to render him unfit because of physical disability in the near future is unfit even though he may be physically capable of performing all of his duties at the moment. Conversely, a member convalescing from an illness or injury and who is likely to recover to a degree which would permit him to perform all of his duties in the near future is to be considered fit for duty.

(c) The mere presence of physical disability or of a disability ratable in terms of the Veterans Administration Schedule for Rating Disabilities, or the fact that the party concerned is currently on the sick list or hospitalized, does not require a finding of unfitness for duty.

(d) In determining whether a party who has a physical disability is fit for duty or unfit because of physical disability, it is necessary to correlate the nature and degree of functional impairment with the requirements of the duties to which the member may be assigned in the rank, grade or rating in which serving.

(e) Among the factors which shall not be considered and which have no bearing upon this determination are the member's ability or inability to meet physical standards for enlistment or appointment; the fact that the party's service is being terminated because of expiration of enlistment, discharge for other reasons, voluntary or involuntary retirement, or release to inactive duty; the needs of the service for his special skills; physical fitness for specialized duty such as duty involving flying or duty aboard submarines; or physical fitness for transfer to a different component or category within the naval service.

§ 725.216 Incurred while entitled to receive basic pay.

(a) "Incurred" refers to the date or time when a disease or injury is contracted or suffered as distinguished from a later date when it is determined that. by reason of such disease or injury, a member has become unfit to perform his duties. Physical disability due to the natural progress of disease or injury is "incurred" when the disease or injury causing the disability is contracted. Increase in physical disability during service in excess of that due to natural progress of the disease or injury is considered due to aggravation by service and as such is "incurred" when the disease or injury is aggravated. "While entitled to receive basic pay" encompasses all types of duty which entitle the party concerned to receive active duty pay, and any duty without pay which, by law, may be counted the same as like duty with pay. This definition shall not be construed to entitle any party not on active duty, who at the time of his separation from active duty was considered physically fit for duty, to benefits under Chapter 61, 10 U.S. Code by reason of an increase in disability occurring while the party is not entitled to receive basic pay.

(b) Every person employed in active service shall be taken to have been in sound condition when examined, accepted, and enrolled for service, except as to physical disabilities noted at time of the examination, acceptance, and enrollment, or where clear and convincing evidence demonstrates that the injury or disease existed prior to acceptance and enrollment and was not aggravated by such service. Only those physical disabilities recorded at the time of the examination are to be considered as noted. A mere history of preservice existence of a physical disability recorded at the time of examination for acceptance does not constitute a notation but will be considered together with all other material evidence in determinations as to the incurrence of such physical disabilities.

(c) "Clear and convincing" means obvious or manifest. Accordingly, evidence which makes it obvious or manifest that the injury or disease under consideration existed prior to acceptance and enrollment for service will satisfy this requirement.

(d) Determinations concerning the inception of injury or disease not noted should not be based on medical judgment alone as distinguished from accepted medical principles or on history alone, without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. This determination should be based on a thorough analysis of the entire evidentiary showing in the individual case and a careful correlation of all material facts with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of such injury or disease. History conforming to accepted medical principles pertaining to such injury or disease should be given due consideration, in conjunction with basic clinical data concerning the manifestation, development, and nature of such injury or disease, and accorded probative value consistent with accepted medical and evidentiary principles in relation to other competent evidence in each case. All material evidence relating to the incurrence, symptoms. and course of the injury or disease, including official and other records made prior to and during service, together with all other lay and medical evidence concerning the inception, development, and manifestations of such injury or disease, should be taken into full account.

(e) There are certain medical principles so well and universally recognized as definitely to constitute fact, and when in accordance with these principles, existence prior to entrance into service is established, no further additional or confirmatory facts are necessary. For example, with notation or discovery, during

scars, fibrosis of the lungs, atrophy following disease of the central or peripheral nervous system, healed fractures, absent, displaced, or resected parts of organs, supernumerary parts, congenital malformations, with no evidence of the pertinent antecedent active injury or disease during service, the established facts are so convincing as to impel the conclusion that the residual condition existed prior to entrance into active service, without further proof of this fact. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close to that date that the disease could not have originated in so short a period, will be accepted as clear and convincing proof that the disease existed prior to entrance into active service. Conditions of infectious origin are to be considered with regard to the circumstances of infection and the incubation period. Manifestation of disease within less than the minimum incubation period after enlistment will be accepted as showing inception prior to service. In neuropsychiatric conditions, situational reactions, characteristic of a life pattern indicating psychopathic personality, chronic psychoneurosis of long standing, or other neuropsychiatric symptoms shown to have existed prior to service with manifestations during service, which are the basis of the diagnosis in service, may be considered in determining whether preexisting neuropsychiatric conditions exist. When the conclusion that the mental disorder of a psychotic party existed prior to service is based upon a past history of aberrant behavior related by the party, it is essential that the record show that the party had the capacity to recollect and narrate in a trustworthy manner and that the past history is reliable rather than a manifestation of his illness. When the ability of the party to recollect and narrate in a trustworthy manner is in doubt, there must be corroborative evidence.

§ 725.217 Intentional misconduct or willful neglect.

(a) Intentional misconduct and willful neglect are terms descriptive of misconduct. Misconduct is wrongful conduct. Simple or ordinary negligence or carelessness standing alone does not constitute misconduct. As a general rule, the fact that an act violates a law, regulation or order does not, of itself, constitute a basis for a determination of misconduct. In making these determinations physical evaluation boards should be apprised of the action taken by the Judge Advocate General whose decision as to misconduct is advisory but not necessarily binding on the board.

(b) Physical evaluation boards shall apply the following rules in making recommended findings concerning misconduct:

(1) In the absence of sufficient evidence to the contrary, it is presumed that injury or disease suffered by a person in the naval service was not the result of his misconduct. In order to overcome this presumption, there must be clear and convincing evidence that the injury or disease was either the proximate re-

service, of residual conditions, such as sult of the person's misconduct or that it scars, fibrosis of the lungs, atrophy fol- was incurred in the circumstances noted lowing disease of the central or periph- in subparagraph (6) of this paragraph.

(2) In order to support an opinion of misconduct, it must be found that the injury or disease:

(i) Was intentionally incurred, or resulted from such gross negligence as to demonstrate a reckless disregard of the consequences, and

(ii) Was either immediately caused by the act under consideration or set other events in motion, all constituting a natural and continuous chain of events, which caused the injury or disease, and

(iii) Was the reasonably foreseeable or the likely result of such act.

(3) If the disability is directly caused by an intervening event which was not reasonably foreseeable at the time the act of misconduct in question occurred, then the misconduct cannot be considered to be the cause of the disability.

(4) Simple or ordinary negligence or carelessness standing alone does not constitute misconduct.

(5) The fact that an act violates a law, regulation, or order does not, of itself, constitute a basis for a determination of misconduct.

(6) A finding of misconduct will normally be required independently of the above rules when injury occurs while the individual is engaged in the commission of a felony. For the purpose of this subparagraph a felony is defined as any offense punishable by death or imprisonment for a term exceeding one year.

(7) A presumption exists that all persons are mentally competent. If clear and convincing evidence exists that a person is mentally incompetent with respect to a given act, then he should not be held responsible for the results of that act. Any injury resulting from such an act is not considered to be the result of misconduct, unless the incompetency is shown to have resulted from his prior misconduct and was the proximate cause of the injury.

(8) Intentional self-inflicted injury. unaccompanied by a bona fide suicidal intent in the absence of a showing of mental irresponsibility, is deemed to be the result of the victim's own misconduct. However, in view of the strong human instinct of self-preservation, a bona fide suicide attempt is considered to be evidence of mental irresponsibility. Before the rules pertaining to suicide are applied, however, it must be established that the injury was the result of a suicidal act with the suicidal intent, and in cases of doubt, any other reasonable explanation of the injury should be adopted. When it is determined that the injury was the result of a bona fide suicide attempt, and when no reasonable and adequate motive therefor is supplied by the evidence, the suicidal act itself rebuts the presumption of sanity and a conclusion of mental irresponsibility is in order. When the evidence indicates that the suicidal act was motivated by a reason that might prompt a rational person to take his own life, the question of sanity will depend upon all of the evidence pertaining to the mental competence of the person at the time of the suicidal act.

- (9) Miscellaneous cases:
- (i) Venereal disease. Venereal disease of itself is not to be deemed due to misconduct if the person has complied with pertinent regulations requiring him to report and receive treatment for such disease.
- (ii) Surgical and medical treatment. Disability shall be held to have been incurred as the result of misconduct if it resulted from an unreasonable refusal to submit to surgical or medical treatment.
- (iii) Intoxication. Injury incurred as the proximate result of intoxication is considered to have occurred as the result of misconduct. In order for intoxication alone to be considered the basis for a determination of misconduct, there must be a clear showing that the person was intoxicated at the time of the injury and that the intoxication was a proximate cause thereof.
- (iv) Alcoholism and drugs. Disability, either sickness or disease, which is directly attributable to the intemperate use of alcoholic liquor or habit forming drugs is the result of misconduct.

§ 725.218 Unauthorized absence.

"Unauthorized absence" is any absence from duty without authority, such as contemplated under the disciplinary laws applicable to the uniformed service concerned at the time of its commission.

§ 725.219 Line of duty.

- (a) Disability proximately resulting from injury or disease suffered while in active service shall be considered to have been in line of duty unless the injury or disease is found to have been incurred;
- (1) As the result of the person's misconduct, or
- (2) While avoiding duty by deserting the service, or
- (3) During a period of unauthorized absence, or
- (4) While confined under sentence of court-martial which involved an unremitted dishonorable discharge, or
- (5) While confined under sentence of civil court following conviction of a felony as defined by the laws of the jurisdiction where convicted.
- (b) The presumptions and guides set forth in § 725.216(b) through (e) apply to the determinations of line of duty.

§ 725.220 Aggravation by service.

- (a) Injury or disease noted prior to service or shown by clear and convincing evidence, including accepted medical principles, to have had its inception prior to service, will be conceded to have been aggravated when such disability underwent an increase in severity during the service unless such increase in severity is shown by clear and convincing evidence, including medical facts and principles, to have been due to the natural progress of the disease.
- (b) Aggravation of a disability noted prior to service or shown by clear and convincing evidence, including accepted medical principles, to have had its origin prior to service may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record per-

taining to the manifestations of such disability prior to and during service.

- (c) Sudden pathological developments involving preexisting diseases, such as hemoptysis, spontaneous pneumothorax, perforation of a duodenal ulcer, coronary occlusion or thrombosis, cardiac decompensation, cerebral hemorrhage, and active recurrent rheumatic fever occurring in service, establish aggravation unless it is shown by clear and convincing evidence that there was no increase in residual disability.
- (d) Recurrences, acute episodes, symptomatic fluctuations, descriptive variations and diagnostic evaluations of a preservice injury or disease during service are not to be construed as establishing increase of disability in the absence of sudden pathological development or advancement of the basic chronic pathology during active service such as to establish increase of disability during service.
- (e) The usual effects of medical and surgical treatment in service having the effect of ameliorating disease or other conditions incurred before entry into service, including postoperative scars, absent or poorly functioning parts or organs do not constitute aggravation unless the treatment was required to relieve disability which had been aggravated by service.

§ 725.221 Proximate result of performance of active duty.

- (a) A disability is the proximate result of the performance of active duty when the performance of active duty, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the disability, and without which the result would not have occurred.
- (b) In determining the question of proximate result, reasonable doubt shall be resolved in favor of the member. However, a mere possibility that a disability might have resulted from the performance of active duty is not sufficient to create a reasonable doubt and if no causal relation is shown to exist between the performance of active duty and the disability (considering the obligations and duties peculiar to the nature of military or naval service), the disability shall not be considered to be the proximate result of the performance of active duty. The mere fact that a disability is incurred coincident in time with the performance of active duty is not sufficient to warrant a determination that the disability is the proximate result of the performance of active duty.
- (c) For a party who is on active duty for a period of more than 30 days (other than for training under 10 U.S. Code 270(b)), any disability incurred in line of duty while so serving in time of war or national emergency shall be considered to be the proximate result of the performance of active duty.

§ 725.222 Permanent nature of disability.

(a) Disability "may be of a permanent nature" when, based on medical experience in like cases, it is considered likely that the party concerned will re-

cover to an extent which will permit him to perform duty commensurate with his rank, grade or rating within a five-year period from the date of retirement or separation for physical disability; or that within the five-year period disability, if currently ratable at less than seventy-five percent in accordance with the Standard Schedule for Rating Disabilities in current use by the Veterans Administration, will change in degree; or that within the five-year period the disability, if currently ratable at seventyfive percent or more in accordance with such schedule, may fall below such percentage. Where none of the above contingencies is likely to occur, the disability is considered as disability which "is of a permanent nature."

(b) When the party has a disability which neither is nor may be permanent the board shall so state.

§ 725.223 Reasonable doubt.

By reasonable doubt is meant one which exists by reason of the fact that the evidence does not satisfactorily prove or disprove the claim, yet a substantial doubt, and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence, and mere suspicion or doubt as to the truth of statements submitted as distinguished from impeachment or contradiction by evidence or known facts is not a justifiable basis for denying the applicaton of the reasonable doubt doctrine if the entire record otherwise warrants evoking this doctrine. When there is reasonable doubt whether a member is fit or unfit or as to the nature of the condition causing unfitness, these matters should be resolved on the basis of further clinical investigation and observation and such other evidence as may be adduced.

§ 725.224 Active duty.

"Active duty" is full time duty in the active military service of the United States. It includes duty on the active list, full time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

§ 725.225 Active duty for a period of more than 30 days.

"Active duty for a period of more than 30 days" is active duty under a call or order that does not specify a period of 30 days or less.

§ 725.226 Inactive duty training.

- (a) "Inactive duty training" is:
- (1) Duty prescribed for Reserves by the Secretary under 37 U.S. Code 301 or any other provision of law, or
- (2) Special additional duties authorized for Reserves by an authority designated by the Secretary and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.
- (b) Inactive duty training does not include work or study performed in connection with correspondence courses.

§ 725.227 Recommendations not considered substantially detrimental.

Recommendations, final approval of which would defer action on a case for a stated or an indefinite period, or retire the party temporarily for physical disability in lieu of permanent retirement for physical disability or separation, or retire the party permanently for physical disability in lieu of separation, or separate him for physical disability with severance pay in lieu of separation without severance pay, shall not be considered as substantially or materially detrimental to the interests of the party.

§ 725.228 Presumptions.

- (a) A presumption is an inference of the truth of any proposition or fact drawn by a process of probable reasoning in the absence of actual certainty of its truth, or until such certainty is established. Facts which are the subject of presumptions are assumed to be true without proof. Therefore, they are substitutes for evidence. A presumption will establish a fact unless there is clear and convincing evidence to the contrary. Evidence may be received which convinces the board that the presumed fact is not true in that case. Contrariwise, evidence may be received, the weight of which is not deemed sufficient to overcome the weight of the presumed facts. It is, therefore, the responsibility of the board to give due and careful consideration to both the presumptions and the evidence adduced in determining the true facts in each case.
- (b) The following presumptions are applicable to cases before physical evaluation boards:
- (1) It is presumed that every person employed in the active naval service was in sound condition when he entered the service except as noted to the contrary at the time of examination for such service. (See § 725.216(b).)
- (2) Any increase during active service in the degree of a preservice disability is presumed to be due to aggravation as opposed to the natural progress of the disease or injury. (See § 725.220.)
- (3) Injury or disease is presumed to be incurred in the line of duty. (See § 725.219.)
- (4) Injury or disease suffered by a person in the naval service is presumed to be not the result of misconduct. (See § 725.217.)
- (5) All persons are presumed to be mentally competent. (See § 725.217.)
- (6) A person on active duty is presumed to be fit to perform the duties of his office, grade, rank, or rating.

§ 725.229 Areas of responsibility.

As used in Subpart E of this part, the terms, "Areas of responsibility," "technical specialty" and "Secretary's Advisor" shall be construed to refer to the duties and responsibilities and technical control aspects of the Commandant of the Marine Corps or the cognizant Bureau or Office as set forth in chapters 3 and 4, sections 3, 5, and 9, U.S. Navy Regulations.

Subpart C—Medical Boards

§ 725.301 Purpose.

Medical boards are constituted to report upon the present state of health of any member of the naval service who may be referred to the board by competent authority.

§ 725.302 Convening authority.

Medical boards may be convened by commanding officers of naval hospitals, by the Chief of Naval Personnel, the Commandant of the Marine Corps and the Surgeon General of the Navy. Referral of cases to a medical board shall be effected in such manner as a convening authority directs; however, no member shall be referred to a medical board until he has been admitted to the sick list.

§ 725.303 Composition.

Medical boards, whenever practicable, shall consist of three medical officers of the Navy. When three medical officers of the Navy are not available, the board may consist in whole, or in part, of medical officers of the Army, Navy, Air Force, or of the Public Health Service. In exceptional cases, as determined by the convening authority, medical boards may consist of a lesser number of medical officers. When the board is reporting upon conditions which normally fall within the professional jurisdiction of the Dental Department, the membership of the board shall include a dental officer if available.

§ 725.304 Procedure.

The board shall meet to consider and report upon the case of any member who is referred to it by competent authority for consideration. It shall require and examine such records in the case as are necessary to formulate a considered conclusion regarding the individual's present state of health. It shall conduct such examination of the member whose case is under consideration as is considered necessary, and shall afford him the opportunity to appear in person before the board, provided he is physically and mentally able to appear, and provided it is considered by competent medical authority that such appearance will not adversely affect his health. Except in those cases in which the information would adversely affect the member's health, the member concerned shall be advised of the board's decision as to indicated disposition and shall be afforded the opportunity to submit a rebuttal in writing.

§ 725.305 Report.

(a) The report of the medical board shall be submitted in letter form to the convening authority. The subject of the letter shall include the member's full name, rank, grade, or rate, and file or service number. The body of the report shall present a summary, in longitudinal form, of all pertinent data concerning each complaint, symptom, disease, injury, or disability presented by the member which causes or is alleged to cause impairment of health.

- (b) Where no impairment exists the report shall so indicate.
- (c) Wherever possible, impairment of function should be reported in terms of objective tests or findings rather than as opinion, conjecture, or speculation.
- (d) The report must contain sufficient data to permit a reviewer to conclude whether the member suffers impairment of health, and if so to determine its nature and the degree of impairment. The discussion of each impairment should be presented in such manner as to show the limitation of activity imposed by the disability and the significance of subjective symptoms alleged to cause impairment. Such evidence is intended for use in rating disability in the event the member is later determined to be unfit for the duties of his grade, rank, or rate.
- (e) The disability rating, which will be based in part on the data presented, is governed by the ability of the body as a whole, or of the psyche, or of a system or organ of the body, according to the general or localized effects of disease or injury, to function under the circumstances of ordinary activity in daily life including employment. The Manual for Medical Examiners of the Veterans Administration contains provisions indicating the scope of the report which is required for rating purposes.
- (f) While the report must set forth an expert clinical appraisal of functional status, it shall not contain opinions as to existence or permanency of unfitness to perform the duties of the member's grade, rank, or rate, nor shall the report contain any opinion as to conduct or line-of-duty status of any impairment which the member presents; but all evidence bearing upon these questions shall be set forth completely.

§ 725.306 Indicated disposition.

- (a) The indicated disposition in any case is either (1) appearance before a physical evaluation board or (2) return to duty. Appearance before a physical evaluation board is indicated when it appears possible the member may be unfit to perform his duties because of physical disability. Return to duty is indicated in all other cases.
- (b) Whenever, in accordance with this instruction a naval aviator (Class I aviation personnel) appears before a medical board and the indicated disposition is return to duty, he shall be examined by a flight surgeon and a report of the flight physical examination shall be transmitted to the Bureau of Medicine and Surgery. Under these circumstances, the individual examined shall be retained on the sick list until the required flight examination is completed. If retaining such an individual on the sick list under the diagnosis which prompted the medical board to be held is statistically unjustified, the individual concerned will be retained on the sick list under the diagnosis "Examination, physical." When it is more practicable, such an individual may be transferred under the diagnosis "Examination, physical" to the nearest medical activity to which a flight surgeon

is attached for the purpose of obtaining the required flight physical examination.

(c) Members who are physically fit, but militarily unfit to continue in service because of conditions which do not constitute physical disability should be reported upon by a board of medical survey in accordance with Chapter 18, Manual of the Medical Department, U.S. Navy.

(d) When appearance before a physical evaluation board is indicated by the board it shall express its opinion as to whether personal appearance of the member before such board would or would not be deleterious to the member's physical or mental health and whether disclosure to the member of information relative to the member's physical or mental condition would or would not adversely affect the member's physical or mental health.

§ 725.307 Disposition of report.

The report of the medical board shall be signed by all the members of the board and transmitted to the convening authority. The member should be advised of the indicated disposition except where such advice might be deleterious to his physical or mental health. When the member is informed as to the indicated disposition, the report should be accompanied by a statement signed by the member that he has been advised of the indicated disposition and that he either concurs or does not concur therein and his rebuttal, if any.

§ 725.308 Action by convening authority.

(a) If the indicated disposition is appearance before a physical evaluation board, and the convening authority concurs, he shall forward the report of the medical board, together with a photostatic or typed copy of the complete clinical record, to the nearest physical evaluation board. Orders shall not be issued for personal appearance before a physical evaluation board until, and unless, the physical evaluation board advises the convening authority that the member has requested personal appearance before the board. Also, orders for personal appearance shall not be issued in the case of mentally incompetent members. Mentally incompetent members shall be represented by qualified counsel before physical evaluation boards and shall not be processed under the modified procedure prescribed in subpart D.

(b) If and when the physical evaluation board advises the convening authority that the member has requested personal appearance before the physical evaluation board, he shall issue orders without delay directing the member to appear before the board. When such orders involve entitlement to travel and transportation allowance, they shall be issued in accordance with the current instructions relating thereto.

(c) If the indicated disposition is appearance before a physical evaluation board and the convening authority does not concur, he shall forward the report together with a full statement setting forth his reasons for nonconcurrence to the Chief of Naval Personnel or Com-

mandant of the Marine Corps via the Chief, Bureau of Medicine and Surgery for determination as to disposition to be effected.

(d) When the indicated disposition is "return to duty" the report shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, by way of the Chief, Bureau of Medicine and Surgery, except in case the individual submits a statement in rebuttal in which he requests that his case he considered by a physical evaluation board, in which event the convening authority shall follow the procedure prescribed in paragraph (a) of this section.

(e) Members whose cases have been referred to a physical evaluation board pursuant to paragraph (a) of this section shall not be retained in naval hospitals solely for the purpose of awaiting action by or for appearance before a physical evaluation board. In the event further hospitalization is not indicated the member shall be discharged from the sick list and transferred to an appropriate administrative command in accordance with applicable departmental instructions. Whenever a member has been released from the hospital following appearance before a medical board which has indicated appearance before a physical evaluation board and subsequently information is received from the physical evaluation board that the member has requested personal appearance before the board, the convening authority of the medical board shall inform the administrative command that the member has requested personal appearance before the physical evaluation board. The administrative command shall issue the necessary orders for appearance before the physical evaluation board.

§ 725.309 Cases involving discipline.

When court-martial proceedings or investigative proceedings which might lead to court-martial are pending, indicated, or have been completed, and in cases of uncompleted sentences of courts-martial involving confinement, the report of the medical board, together with all pertinent facts relative to the disciplinary aspects of the case, shall be forwarded by the convening authority to the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, via the Chief, Bureau of Medicine and Surgery, for such administrative action as is deemed warranted and no orders directing or authorizing the appearance of the individual before a physical evaluation board shall be issued by the convening authority.

§ 725.310 Requests for medical records.

As soon as it appears likely that a member will be considered for separation from the service by reason of physical disability, the commanding officer of the hospital concerned shall advise the Bureau of Medicine and Surgery (Code 3351) and request that the member's medical records be forwarded to the cognizant physical evaluation board. The Chief of Naval Personnel or the Commandant of the Marine Corps shall also be requested to forward a statement of service to the physical evaluation board.

Subpart D—Physical Evaluation Boards

§ 725.401 Function.

Physical evaluation boards are constituted to afford a full and fair hearing incident to evaluation of the physical fitness of certain members and former members of the naval service to perform the duties of their office, rank, grade or rating; to investigate the nature, cause, degree and probable permanency of disabilities presented by such parties and to make recommended findings appropriate thereto. No member of the naval service shall be separated or retired by reason of physical disability from an active duty status without a hearing before a physical evaluation board unless such hearing is waived by the member concerned. No member of the naval service shall be separated or retired by reason of physical disability from an inactive duty status without a hearing before a physical evaluation board if such member shall demand it.

§ 725.402 Convening authorities.

(a) The Secretary of the Navy and such officers as he may designate may convene physical evaluation boards. The following officers are hereby designated as empowered to convene such boards:

Chief of Naval Personnel.

Commandant of the Marine Corps.

Commandants of the First, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Eleventh, Twelfth and Thirteenth Naval Districts. Commandant, Potomac River Naval Com-

Commandant, Marine Corps Schools, Quan-

tico, Virginia.

Commanding Generals of Marine Base, Camp Lejeune, North Carolina, and Camp Pendleton, Oceanside, California.

Commanding General, Marine Corps Recruit Depot, Parris Island, South Carolina. Commanding General, Department of the Pacific.

(b) No officer may appear as the party whose case is to be evaluated before a physical evaluation board which has been convened by him or any one temporarily succeeding to his office or by any one under him in the chain of command.

§ 725.403 Appointment of boards.

- (a) Orders appointing physical evaluation boards shall:
 - (1) Cite the authority therefor;
- (2) Designate the time and place of meeting; and
- (3) List by name the regular members, counsel for the board, and counsel for the party;
- (4) List by name the alternate members.
- (b) Certified copies of such orders and amendatory orders shall be forwarded to the Judge Advocate General by the convening authority. The original orders appointing physical evaluation boards and originals of all amendatory orders shall be retained by the boards until cancelled. When cancelled they shall be forwarded to the Judge Advocate General by way of the convening authority.
- (c) The medical member of the board shall be selected from medical officers specified for such duty either permanent

the Navy.

(d) Counsel for the party shall be selected by the convening authority from officers of his command or those made available to him from other commands for this duty.

§ 725.404 Jurisdiction of boards.

A physical evaluation board shall have jurisdiction to act in any proper case referred to it by the Secretary of the Navy, the Chief of Naval Personnel, the Commandant of the Marine Corps, the Surgeon General of the Navy, the Physical Review Council, the Physical Disability Review Board, or any officer empowered to convene a medical board.

§ 725.405 Composition.

(a) A physical evaluation board will be composed of competent and mature officers of sound judgment who are familiar with board procedures and, in particular, with the regulations and instructions pertaining to physical evaluation boards. The board shall consist of three commissioned officers as members, one of whom shall be a medical officer and two of whom shall be nonmedical officers. There shall also be appointed a counsel for the board and a counsel for the party. The members of the board shall be of substantially comparable rank and experience. Under no circumstances will differences in rank or experience be permitted to inhibit or influence junior members in the expression of their opinions. Whenever practicable, at least a majority of the members of the board who act on a case shall be senior in rank to the party. In the absence of objection by the party, the seniority of the members of the board shall be considered as waived. When the party is a member of a Reserve component, a majority of the members of the board who act on the case shall be Reserve officers, if available. In any instance where a majority of Reserve members is not available, the board will include not less than one Reserve officer among its members, and the record shall contain a certificate by the convening authority as to the unavailability of Reserve officers to constitute a majority of the board.

(b) Appointment to membership on a physical evaluation board shall constitute the primary duty of the officers so assigned. Although alternate members may and should be appointed, the number thereof should be kept to a minimum consistent with the expeditious processing of physical evaluation board cases and with the maintenance of continuity in members. The use of alternate members should be reserved for cases where the regular members are unavoidably absent.

§ 725.406 Limitation on medical members.

No medical officer shall act as a medical member of a physical evaluation board who has had direct charge of the case of the party concerned immediately preceding appearance before the board or who was a member of a board of medical officers which reported on the party concerned.

or alternate by the Surgeon General of § 725.407 Limitation on nonmedical members.

> Officers of the Dental Corps, Medical Service Corps, and the Nurse Corps are considered to be nonmedical officers as used in this chapter, but none shall act as nonmedical members of a physical evaluation board unless the party concerned is a member of the same corps. When the party concerned is a male member of the Navy the nonmedical members shall be male officers of the Navy. When the party concerned is a male member of the Marine Corps, the nonmedical members shall be male officers of the Marine Corps. When the party concerned is a female, a female officer shall be substituted for a male nonmedical member.

$\S~725.408$ Counsel for the physical evaluation board.

The counsel for the physical evaluation board shall be a competent, mature officer or sound judgment, who is familiar with procedures, regulations and instructions relating to such board.

§ 725.409 Counsel for the party.

Designated counsel for the party shall be a competent, mature officer of sound judgment, who is familiar with procedures, regulations and instructions relating to such board. In all cases to which § 725.422 is applicable, and in all others when reasonably available, an officer who is a member of the bar of a Federal Court or the highest court of a State, shall be designated as counsel for the party. The designated counsel shall represent the party in every case, unless the party obtains civilian counsel, at his own expense, or other military counsel, if available, or unless the party, after having been given the opportunity of consulting with counsel, expressly waives counsel. In the case of mentally incompetent parties, the next of kin, person to be notified in case of an emergency or legal guardian may obtain civilian counsel, at their own expense, or other military counsel, if available. In the event such counsel is not provided, the designated counsel will represent the mentally incompetent party in every case. A waiver of the right to counsel will not be accepted.

§ 725.410 Orders for appearance.

(a) Commanding Officers of naval hospitals, Continental U.S. (subject to the limitations set forth in Subpart C), commanding officers of activities other than naval hospitals to which a member has been ordered to await action on disability separation proceedings, the Chief of Naval Personnel, and the Commandant of the Marine Corps are authorized to issue orders directing or authorizing members to report to a physical evaluation board.

(b) The Chief of Naval Personnel or the Commandant of the Marine Corps may specifically delegate authority to order or authorize members to appear before a physical evaluation board.

(c) Orders involving entitlement to travel allowance shall be issued in accordance with current instructions relating thereto.

(d) When appearance before a physical evaluation board is indicated in the case of a member who is at a station outside the Continental U.S., and the member waives his right to appear in person before the board, the medical report shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, by way of the Chief, Bureau of Medicine and Surgery for appropriate action. When such a member does not waive his right to appear in person before the board, he shall be transferred in a patient status to the nearest hospital in the Continental U.S. at which a physical evaluation board is convened.

§ 725.411 Senior member, duties and responsibilities.

The officer senior in precedence among the members of the physical evaluation board considering any one case shall act as the presiding officer of the board. He shall take appropriate action to preserve order in open sessions of the board and to insure that the proceedings are conducted in a dignified and judicial manner. He will rule upon all interlocutory questions except challenges. His rulings in interlocutory questions may be objected to by any other member of the board in which case the matter will be decided by a majority vote of the board members in closed session. For good reason he may recess or adjourn the board or grant a continuance in the case. He shall preside over closed sessions of the board and speak for the board in announcing its recommended findings and the result of any vote upon challenge or other interlocutory question. He and the counsel for the board shall authenticate the record of proceedings except that in the absence of the senior member the record may be authenticated by any other member who acted in the case.

§ 725.412 Members in general, duties and responsibilities.

It is the responsibility of each member of the board to weigh and to impartially examine the evidence presented in a case and to make recommended findings, each according to his conscience, and in conformity with applicable laws and regulations and established policy. Each member has an equal voice and vote with other members in deliberating upon and deciding all questions submitted to vote. Each member may question witnesses in an order prescribed by the senior member. Members of the board may discuss the case freely in closed session, but except as authorized to be set forth in the record of proceedings pursuant to this subpart, the opinions expressed by any member in closed sessions shall not be disclosed.

§ 725.413 Counsel for the board, duties and responsibilities.

The officer designated as counsel for the physical evaluation board shall, in every case before the board, assemble, prepare, and present all available evidence which is relevant to the issues to be decided by the board. This shall include, but not be limited to, the medical records, investigation reports and courts

of inquiry, and the current disciplinary status of the party concerned. He shall examine witnesses who appear before the board. In accordance with procedures prescribed by competent authority, he shall secure or request witnesses to appear before the board and shall obtain depositions, affidavits, or statements which may aid the board in its decision of the issues before it. He shall notify the board members, witnesses, counsel for the party, and reporter of the time and place fixed for the hearing and make necessary arrangements to permit a proper hearing to be held. He shall insure that the records of the party concerned are furnished to the medical witnesses for examination prior to the hearing and shall perform such other duties as may be required by the senior member of the board. It is his specific responsibility to insure that the board has before it sufficient information to ascertain as accurately as practicable the circumstances in which the party concerned incurred his disability, the extent of the disability, and where it appears that the disability existed prior to the party's entrance into active service, its extent at the time of entrance into active service and all other pertinent circumstances relating to the party's disability. He shall, under the direction of the board, be responsible for preparation of the record of proceedings and shall, prior to the senior member, sign the record of proceedings as an authentication of its correctness. The standards of conduct for the counsel for the board shall be the same as prescribed for counsel before naval courts-martial (§ 719.3 of this chapter).

§ 725.414 Counsel for the party, duties and responsibilities.

When the party is physically located in an area in which a physical evaluation board is convened, and prima facie findings are referred to the party under the provisions of § 725.418, designated counsel for the party shall confer with the party in order to advise him of his rights and the effect of accepting the board's prima facie findings. If the party accepts the prima facie findings, designated counsel for the party shall indicate on the statement of acceptance (see § 725.-419) that he has advised party of his rights. When the party demands a full and fair hearing, designated counsel for the party shall represent the party before the physical evaluation board and shall prepare his case in accordance with the law and regulations and the best interest of the party. He will request the counsel for the board to arrange for the attendance of necessary witnesses and other specifically desired evidence and will assist in the procurement and presentation of any available evidence which will support the position of the party concerned. He shall perform such other duties as usually devolve upon counsel for an interested party before a formal fact-finding body and will guard the interest of the party by all honorable and legitimate means. Where counsel other than the designated counsel has been obtained to represent the party, designated counsel may act as associate counsel if

desired as such by the party. The standards of conduct of counsel for the party shall be the same as prescribed for counsel before naval courts-martial (§ 719.3 of this chapter). When the party is not in the same area as the physical evaluation board, and in order to avoid travel by designated counsel the function of counsel for the party to confer with and advise party of his rights pursuant to this section shall be accomplished by an officer designated for that purpose by the commandant of the district in which the party is located. In the event party demands a full and fair hearing, counsel shall be designated by the convening authority of the physical evaluation board to represent the party before the board.

§ 725.415 Board reporter, interpreter and orderly.

The convening authority shall provide qualified reporters, and where necessary or requested by the counsel for the board, an interpreter or an orderly or both in the same manner as provided for courts of inquiry. Such individuals shall act in the same capacity as in the proceedings of a court of inquiry.

§ 725.416 Proceedings.

The proceedings of physical evaluation boards shall be conducted in accordance with instructions set out in this part and in accordance with Chapter III of the Naval Supplement to the Manual for Courts-Martial insofar as practicable except that an oath of affirmation need not be administered to the members of the board or the counsel.

§ 725.417 Personal appearance.

When the party concerned demands a full and fair hearing he shall appear personally before the board unless there is an opinion by a medical board or a determination by the physical evaluation board that to do so would be detrimental to his health. In addition to the fact that it may constitute a military offense, failure to appear when so directed or authorized shall be considered as a waiver of the right of the party concerned to appear before the board unless it is reasonably shown that such failure was through no fault of the party. The board may at its discretion, however, waive the appearance of the party if so requested in writing by the party concerned. Such request shall be appended to the record of proceedings of the board.

§ 725.418 Modified procedure.

(a) The modified procedure outlined in the following paragraphs is intended to permit expeditious disposition of those cases in which prima facie recommended findings, based upon the records alone, are acceptable to the party. The modified procedure, however, shall not be used in cases of mentally incompetent members.

(b) In all cases except those wherein the party is considered to be mentally incompetent or is on the temporary disability retired list, the physical evaluation board shall review all pertinent documentary evidence and make prima facie recommended findings which shall be referred to the party whose case is being evaluated. Prima facie findings shall be referred to the party as provided in § 725.419. The party shall be allowed two working days to advise the physical evaluation board, in writing, whether the prima facie findings are acceptable to him. If the party accepts the prima facie findings and states in writing that he does not demand a full and fair hearing. the board, without conducting further proceedings, shall forward all records, together with the party's statement of acceptance and the prima facie findings, to the Physical Review Council. In the event that the prima facie findings are not acceptable to the party, and he so demands, he shall be afforded a full and fair hearing before the board.

(c) The convening authority of the medical board or other cognizant authority shall be advised by the physical evaluation board when party demands a full and fair hearing and desires to appear before the board in person, so that appropriate orders may be issued. In any case in which the Physical Review Council does not concur with the prima facie findings submitted by the board and proposes substitute findings substantially detrimental to the party, the Physical Review Council shall return the records to the physical evaluation board, and the party shall, if he so requests, be afforded a full and fair hearing.

§ 725.419 Prima facie findings and statement of acceptance.

Prima facie findings pursuant to \$725.418 shall be prepared and delivered to the party in the following form:

From: Physical Evaluation Board. To: (Party.)

Via: Designated counsel for the party.
Subj: Prima facie recommended findings
of a Physical Evaluation Board.

1. A Physical Evaluation Board met on (date) to consider your case, and solely on the basis of a review of the records, the Board intends to recommend approval of the following prima facle finding(s):

(Findings in accordance with §§ 725.425 to 725.431, as appropriate.)

- 2. Please advise the Physical Evaluation Board, in writing, within two working days after receipt of this letter whether or not the prima facie findings are acceptable to you. If you accept these findings and do not exercise your right to a full and fair hearing, the findings will be forwarded to the Physical Review Council without further proceedings before the Board. If you do not accept the prima facie findings, you will be afforded a full and fair hearing before the Physical Evaluation Board.
- 3. You are advised that the prima facie findings noted above are recommended findings only and are subject to review as provided in Chapter 5 of the Disability Separation Manual (Subpart E of this part). Final disposition will be in accordance with the direction of the Secretary of the Navy.
- 4. If you accept the prima facie findings, please sign attached Statement "A." If you do not accept the prima facie findings, complete and sign Statement "B." Return your signed statement to the Physical Evaluation Board without delay.

Senior Member, PEB

STATEMENT "A"

(Sign only if you accept the prima facie findings.)

The prima facie findings of the Physical Evaluation Board and my right to a full and fair hearing before the Physical Evaluation Board have been explained to me by counsel. I accept the prima facie findings and do not demand a full and fair hearing before the Physical Evaluation Board.

(Signature of Party)

STATEMENT "B"

(Sign only if you do not accept prima facie findings.)

I have been informed of the prima facie findings of the Physical Evaluation Board. I do not accept these findings and demand a full and fair hearing before the Physical Evaluation Board. I (do, do not) desire to appear before the Physical Evaluation Board in person. I understand that if I do not appear in person, I will be represented by counsel before the Physical Evaluation Board.

(Signature of Party)

STATEMENT OF COUNSEL

I certify that I have advised party of his rights in the foregoing matter.

(Counsel for the Party)

§ 725.420 Challenges.

Members of a physical evaluation board may be challenged through the same procedure and for the same reasons as prescribed for members of a court of inquiry.

§ 725.421 Full and fair hearing.

Every party whose case is being considered by a physical evaluation board shall be deemed to have demanded a full and fair hearing and shall be granted such unless he states in writing that he does not demand a full and fair hearing. (See §§ 725.418 and 725.419.) When a party who has been directed to appear before a board fails to do so through his own fault and his absence has not been authorized by the board, the absence will not be excused and he will be deemed to have relinquished his demand for a full and fair hearing. The requirements for a full and fair hearing shall include, but shall not be limited to, the right of the party concerned: To be present in person unless to do so would be detrimental to his health; to be represented by qualified counsel during all stages of the proceedings until final action on the case is effected; to challenge members for cause; to present evidence in his own behalf; to secure witnesses, depositions, affidavits and statements on relevant issues insofar as practicable; to crossexamine witnesses; to present or have presented arguments in his behalf; to have the issues in his case decided only on evidence adduced and presented in the hearing; to file a rebuttal to the recommended findings of the physical evaluation board, and in certain circumstances to file a rebuttal to the recommended substitute findings of the Physical Review Council. The party may testify in his own behalf or may be called as a witness by the board. Not less than three days prior to the day set for the hearing, all relevant rules and regulations, including the standard schedule of rating disabilities in current use by

the Veterans Administration, and all records and papers pertaining to the case shall be made available to the party concerned or his counsel, as appropriate, who shall have the right to inspect such rules, records and papers and to make notes therefrom as may be necessary in the preparation of the case. The party concerned or his counsel may, in writing, waive the right to the three-day inspection period and, upon the filing of such waiver, the board may proceed to hear the case. Failure of the party concerned to utilize one or more of the aspects of a full and fair hearing shall not be considered as a waiver of other such aspects.

§ 725.422 Mentally incompetent party.

Upon receipt of a case in which previously it has been found that the party concerned is mentally incompetent, in that he is mentally incapable of managing his own affairs, or in which the physical evaluation board is of the opinion that the party is so mentally incompetent, further proceedings will be held in abeyance until the next of kin, the person to be notified in case of emergency, or the guardian (where appointed) has been notified that he or she may appear and provide counsel in behalf of the party or will be provided with designated counsel if desired. Such person shall be notified, by registered mail, certified mail or by registered air mail, if it will facilitate delivery, with return receipt requested. of: The place, date and hour scheduled for the hearing and that request may be submitted for an extension of time or for a more convenient date; the name, rank, and official address of the officer designated to represent the party: the right of the addressee, at no expense to the Government, to be present at the hearing and to be represented by civilian or naval counsel of his or her own selection or the designated counsel; and the right of the addressee to procure and introduce witnesses, to obtain documentary evidence, and to take such other action as may be deemed necessary in the interests of the party. The hearing will be held at the time scheduled when no reply is received from the person so notified provided that the registered mail receipt indicates that the addressee has received notification. The date for the hearing generally will be two weeks from the date of mailing the notification but may be extended by the senior member upon written request. All correspondence, including the notification, the reply, if any, and the registered mail receipt will be appended as exhibits to the record of proceedings.

§ 725.423 Evidence.

A physical evaluation board shall consider all documentary evidence transmitted to it by proper authority. The board may, in addition, require and examine such records as may be in the files of the Navy Department that relate to the issues before the board. All evidence having a probative value as to the determination of issues before the board may be considered. All testimony shall be taken under oath or affirmation. The oath or affirmation shall be administered by the counsel for the board in a form as follows:

You swear (or affirm) that the evidence you shall give in the matter now before this board shall be the truth, the whole truth and nothing but the truth. So help you God.

In the administration of an affirmation, the closing sentence of adjuration will be omitted. The board may take official notice of any generally accepted medical fact or principle and of any fact which may be judicially noticed by courts-martial. In consideration of the weight or probative value to be accorded evidence, the members of the board are expected to utilize their background and experience, their common sense and their knowledge of human nature and behavior. The fact that a witness is the party whose case is before the board does not condemn him as unworthy of belief, but does create in him an interest greater than that in any other witness, and to that extent affects the question of credibility. It is a general rule that the relations of a witness to the matter to be decided are legitimate subjects of consideration in respect to the weight to be given to his testimony. In every case the testimony of the party concerned should be considered in connection with all the evidence adduced and given such weight as the board may believe it merits. When the testimony presented at the hearing indicates that the party claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the board, there should be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearings should be continued until such development has been accomplished. Recommended findings of the board should be based upon evidence consistent with a reasonable probability of truth.

§ 725.424 Recommended findings.

(a) After having considered and deliberated upon all the evidence before it, the physical evaluation board shall announce, through the senior member, the board's recommended findings. The recommended findings shall be made as prescribed in §§ 725.425 to 725.432, as appropriate. The senior member of the physical evaluation board shall advise the member concerned or his counsel that the recommended findings of the board are advisory only and, therefore, not final or conclusive until disposition of the case has been effected pursuant to the direction of the Secretary.

(b) In any case in which the member has more than one disability, the board shall submit recommended findings with respect to each disability unless: (1) The member concerned is considered to be unfit solely by reason of a condition not a disability; or (2) the member concerned is considered unfit solely by reason of disability which was incurred while not entitled to receive basic pay; or is due to intentional misconduct or willful neglect; or was incurred during a period of unauthorized absence; or is not the proximate result of performance of

active duty in which event recommended findings shall be made only with respect to the condition or disability which the board considers to render the member unfit to perform his duties.

§ 725.425 Recommended findings, members on active duty for more than 30 days.

(Other than for training under 10 U.S. Code 270(b).) (a) If it is considered that the member concerned is fit for duty, the physical evaluation board shall make the following recommended finding only:

It is recommended that (name of member) be found fit for duty.

(b) If it is considered that the member concerned is unfit to perform the duties of his office, grade, rank, or rating solely by reason of a condition or defect not a physical disability, the physical evaluation board shall make the following recommended finding only:

It is recommended that (name of member) be found unfit to perform the duties of his office, grade, rank or rating by reason of (specify condition or defect).

(c) If it is considered that the member concerned is unfit to perform the duties of his office, grade, rank or rating by reason of physical disability, the physical evaluation board shall make the following recommended findings:

It is recommended that (name of member) be found:

(1) Unfit to perform the duties of his office, grade, rank or rating because of physical disability (diagnosis and diagnostic nomenclature number of each disability contributing to the member's unfitness).

(2) That such disability (was) (was not) incurred while entitled to receive basic pay.

(3) That such disability (is) (is not) due to intentional misconduct or willful neglect and (was) (was not) incurred during a

period of unauthorized absence.

(4) a. That such disability (is) (is not) the proximate result of active duty; or

b. That such disability (was) (was not) incurred in line of duty in time of war or National emergency.

(If member has more than 8 years active service, the statement "Has over eight years active service" shall be used in recommended

finding 4 in lieu of 4 a or b.)

(5) That such disability is ratable at (total combined percentage) in accordance with the standard Schedule for Rating Disabilities in current use by the Veterans Administration. (The Board shall set forth under this finding the percentage and VA code numbers of each disability and the combined total thereof existing at the time of evaluation. In cases involving aggravation, the board shall determine the final combined total rating by subtracting the combined total percentage of disability existing at the time of entry into active service or incurred during a period of unauthorized absence or otherwise not incurred in line of duty, from the combined total percentage existing at the time of evaluation provided the percentage of disability existing at time of entry is ascertainable in terms of the Schedule. No actual deduction will be made from a total (100%) rating; however, the percentage of disability upon entry will be set forth in the record. In the event the disability was neither incurred nor aggravated while entitled to receive basic pay; or was incurred due to intentional misconduct or willful neglect; or was incurred during a period of unauthorized absence; or is not the proximate result of the performance of active duty, the board shall insert "not ratable" in lieu of "ratable at (combined total percentage).")

(6) That accepted medical principles indicate that such disability (is) (may be) permanent.

§ 725.426 Recommended findings, members on active duty for 30 days or less.

(Or on training duty under 10 U.S. Code 270(b).) (a) If it is considered that the member concerned is fit for duty, the physical evaluation board shall make the following recommended finding only:

It is recommended that (name of member) be found fit for duty.

(b) If it is considered that the member concerned is unfit to perform the duties of his office, grade, rank, or rating solely by reason of a condition or defect not a physical disability, the physical evaluation board shall make the following recommended finding only:

It is recommended that (name of member) be found unfit to perform the duties of his office, grade, rank or rating by reason of (specify condition or defect).

(c) If it is considered that the member concerned is unfit to perform the duties of his office, grade, rank or rating by reason of physical disability, the physical evaluation board shall make the following recommended findings:

It is recommended that (name of member) be found:

(1) Unfit to perform the duties of his office, grade, rank or rating because of physical disability (diagnosis and diagnostic nomenclature number of each disability contributing to member's unfitness).

(2) That such disability (is) (is not) the result of an injury. (If not the result of an injury, no additional findings required.)

(3) That such disability (is) (is not) due to intentional misconduct or willful neglect and (was) (was not) incurred during a period of unauthorized absence.

(4) That such disability (is) (is not) the proximate result of the performance of active duty.

(5) That such disability is ratable at (total combined percentage) in accordance with the standard Schedule for Rating Disabilities in current use by the Veterans Administration. (The Board shall set forth under this finding the percentage and VA code numbers of each disability and the combined total thereof existing at the time of evaluation. In cases involving aggravation, the board shall determine the final combined total rating by subtracting the combined total percentage of disability existing at the time of entry into active service or incurred during a period of unauthorized absence or otherwise not incurred in line of duty from the combined total percentage existing at the time of evaluation provided the percentage of disability existing at time of entry is ascertainable in terms of the Schedule. No actual deduction will be made from a total (100 percent) rating; however, the percentage of disability upon entry will be set forth in the record. In the event the disability was incurred due to intentional misconduct or willful neglect; or was incurred during a period of unauthorized absence; or is not the proximate result of the performance of active duty (as defined in § 725.221(a)) the board shall insert "not ratable" in lieu of "ratable at (combined total percentage).")

(6) That accepted medical principles indicate that such disability (is) (may be) permanent.

§ 725.427 Recommended findings, inactive duty training cases.

The board shall use the same phraseology in its recommended findings as prescribed in § 725.426 except the words "inactive duty training" shall be substituted for the words "active duty" in recommended finding set forth in § 725.426 (c) (4).

§ 725.428 Recommended findings, cases arising under 10 U.S.C. 1004.

Physical evaluation boards acting in cases arising under 10 U.S.C. 1004 shall make the following recommended findings only:

It is recommended that _____

(Name) be found (physically qualified) (not physically qualified) for active duty in the (U.S. Naval Reserve) (U.S. Marine Corps Reserve).

If it is recommended that the party be found not physically qualified, the board shall set forth the disqualifying defect or disability and the diagnostic nomenclature number therefor. In determining physical qualifications for active duty, due consideration shall be given to the character of duty to which the party may be assigned in the event he should be ordered to active duty pursuant to law.

§ 725.429 Recommended findings, cases arising under 10 U.S.C. 6331.

Physical evaluation boards acting in cases arising under 10 U.S.C. 6331 shall make the following recommended findings only:

It is recommended that _____(Name)

be found (physically qualified) (not physically qualified) for active duty in the (Fleet Reserve) (Fleet Marine Corps Reserve).

If it is recommended that the party be found not physically qualified, the board shall set forth the disqualifying defect or disability and the diagnostic nomenclature number therefor.

§ 725.430 Recommended findings, reevaluation of members on Temporary Disability Retired List.

Physical evaluation boards acting in cases of members of the naval service on the Temporary Disability Retired List shall make findings as prescribed in § 725.425, § 725.426, or § 725.427, as appropriate.

§ 725.431 Recommended findings, retired member on active duty.

In the case of any party serving on active duty in a retired status, the board shall submit a recommended finding as to the percentage of disability incurred while the party was so serving in addition to the findings required in § 725.425 or § 725.426, as appropriate.

§ 725.432 Miscellaneous cases.

Physical evaluation boards considering cases not covered in §§ 725.425 to 725.431 shall make recommended findings only with respect to issues designated by competent authority.

§ 725.433 Minority report.

Each recommended finding made pursuant to this subpart concurred in by a majority of the board shall constitute

the action of the board. Any dissenting member of the board shall make a minority report concerning those particulars in which he does not agree with the action of the board. In case the board is unable to arrive at a conclusion, it shall adjourn and notify the convening authority of such circumstances. In such event, the convening authority may refer the case for consideration to a board composed of different members or he may return it to the original board for further consideration.

§ 725.434 Action prior to final adjournment.

The board may, upon its own motion at any time prior to forwarding the record of proceedings, set aside its previous recommended findings, consider further evidence and make new recommended findings.

§ 725.435 Rebuttal.

The party or his counsel shall be advised of the board's recommended findings and shall be afforded five days. exclusive of Sundays and holidays, after receipt of a copy of the record of proceedings of the board, in which to file a rebuttal. A rebuttal will set forth specifically the recommended findings of the board with which the party or his counsel does not concur together with proposed alternate recommended findings which are acceptable to the party. It is not mandatory, but desirable, that a brief, setting forth the legal and factual basis for such nonconcurrence or any other request for relief, be included in the rebuttal. In any case where a physical evaluation board is directed to conduct a new hearing or proceedings in revision and the party or his counsel files a rebuttal to the recommended findings arrived at in such proceedings, the rebuttal shall operate to afford the party an automatic appeal to the Physical Disability Review Board provided: (a) The recommended findings of such physical evaluation board differ in a material respect, detrimental to the party, from any prior recommended findings made in the case by a physical evaluation board; and (b) the proposed substitute findings of the Physical Review Council differ in a material respect, detrimental to the party, from the relief sought in his rebuttal.

§ 725.436 Preparation and authentication of proceedings.

The record of proceedings of a physical evaluation board shall be prepared in accordance with Chapter III, Naval Supplement to the Manual for Courts-Martial, insofar as practical and shall be authenticated as provided in § 725.411.

§ 725.437 Forwarding of record of proceedings.

The record of proceedings of the physical evaluation board, together with all documents which were before the board including a statement in rebuttal, if one was filed, shall be submitted to the Physical Review Council. A copy of the record of the proceedings shall be furnished the party or his counsel. The recipient of such copy of the record of proceedings shall give a dated receipt therefor.

§ 725.438 Proceedings in revision and new hearings.

In the event that a physical evaluation board is directed to conduct a new hearing, such hearing shall be conducted and the record prepared in the same manner as if the board were meeting in the first instance. The record of proceedings in such case shall be prefixed to the original record. A board directed to convene for a hearing in revision shall, where practicable, consist of the same members who previously acted upon the case and shall proceed as instructed by the referring authority. A board conducting a hearing de novo (a new hearing) shall consist of different members than those who previously acted upon the case.

§ 725.439 Action subsequent to forwarding the record.

In the event any cognizant authority shall receive information subsequent to the forwarding of a record of proceedings of a physical evaluation board and prior to final action thereon, that the party concerned has, following his hearing before such board, committed an offense or offenses such as are believed by the cognizant authority to have a possible bearing on the case and should therefore be brought to the attention of the Physical Review Council; incurred disability in addition to that presented at the time of his hearing; or suffered an increase in the disability that was evaluated; or that his status has changed in any respect which might affect final action on the record of proceedings, such authority shall immediately forward such information to the Physical Review Council by message, with information copies to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, the Judge Advocate General and to the Chief of the Bureau of Medicine and Surgery. Such message shall be followed as soon as practicable by a complete report of the matter, together with recommendations concerning the action to be taken. Upon a change in his status occurring subsequent to his hearing before a physical evaluation board and prior to final action thereon, which, in his opinion, might affect final action, the party concerned may forward information of such change in the manner provided above.

§ 725.440 Processing times.

In order to provide information concerning the processing time at the various stages of disability separation proceedings the senior member of the physical evaluation board shall cause to be appended to each record of proceedings a chronology in duplicate of the proceedings containing the following information: (a) Date medical board convened; (b) date of action by convening authority of medical board; (c) date medical board report received by the physical evaluation board; (d) date statement of service received, if any; (e) date medical records if any received from Bureau of Medicine and Surgery; (f) date case considered under modified procedure; (g) date prima facie findings forwarded to party; (h) date party's statement of acceptance or demand for full and fair hearing received; (i) date case heard by physical evaluation board, when hearing is held; (j) date record of proceedings or prima facie findings forwarded to Physical Review Council.

Subpart E—The Physical Review Council

§ 725.501 Convening authority.

The Secretary of the Navy shall convene the Physical Review Council.

§ 725.502 Composition.

The Physical Review Council shall consist of the Chief of Naval Personnel or his designated representative acting for him, or, when acting in cases involving personnel of the Marine Corps, the Commandant of the Marine Corps or his designated representative acting for him. the Chief of the Bureau of Medicine and Surgery or his designated representative acting for him, and the Judge Advocate General, or his designated representative acting for him, as members, and a recorder. The designated representative of the Chief of Naval Personnel shall be Chairman and the designated representative of the Commandant of the Marine Corps shall be Vice-Chairman of the Physical Review Council.

§ 725.503 Jurisdiction.

The Physical Review Council shall have jurisdiction to act in any particular relating to or implementing its function.

§ 725.504 Function.

(a) It is the function of the Physical Review Council to review the proceedings and recommended findings of physical evaluation boards.

(b) The Physical Review Council is also responsible for acting upon reports of periodic physical examinations referred to it; for advising the Secretary concerning any aspect of any case upon request; and for performing such other duties as the Secretary may from time to time direct.

(c) It is the duty of each member of the Physical Review Council, or his designated representative acting for him to advise the other members of the Physical Review Council or their designated representatives concerning those aspects of the proceedings and recommended findings of a physical evaluation board which fall within his area of responsibility or technical specialty and to perform any other functions in connection therewith which he may be required to perform by law or regulation.

(d) It is not the function of the Council to act as a board, or to vote as to the correctness of recommended findings or action to be taken, or to conduct hearings. Applications for personal appearance by parties concerned will not be entertained.

§ 725.505 Duties of chairman.

The Chairman of the Physical Review Council shall act as administrative head of the Council. He shall be responsible for developing standard processing times for cases and shall advise the Secretary monthly of the cases (by name) which

have been pending before the Council for sixty days or longer. He shall also develop such internal procedures as will promote expeditious handling of cases and agreement within the Council to the greatest practicable degree. The position of Chairman carries no authority over the technical functions of the Chief of the Bureau of Medicine and Surgery or his representative and the Judge Advocate General or his representative.

§ 725.506 General instructions.

(a) If, after consideration of all the evidence in a case before it, the members of the Physical Review Council are in agreement that the recommended findings of a physical evaluation board are correct and in accord with established medical and legal principles and personnel policies, the record of proceedings of the physical evaluation board shall be forwarded to the Secretary for final action.

(b) In the event the members of the Physical Review Council are in agreement that the recommended findings of the physical evaluation board are not correct or not in accord with established medical and legal principles or personnel policies, but that substitute findings, not substantially detrimental to the party, are correct, they shall make such substitute findings and forward the record of proceedings to the Secretary for final action.

(c) In any case considered under the modified procedure prescribed in § 725.418 wherein the party has accepted the prima facie findings and one or more members of the Physical Review Council do not agree with the findings and propose substitute findings substantially detrimental to the party, the record of proceedings shall be returned to the physical evaluation board setting forth the proposed substitute findings and the reasons for disagreement with the prima facie findings of the physical evaluation board. The physical evaluation board shall notify the party of the proposed substitute findings and the party shall, if he demands it, be afforded a full and fair hearing. If the proposed substitute findings of the Physical Review Council are acceptable to the party and he does not demand a full and fair hearing, the record of proceedings, with party's signed statement of acceptance attached, shall be returned to the Physical Review Council for forwarding to the Secretary for final action.

(d) If the members of the Physical Review Council are in agreement that the recommended findings of the physical evaluation board arrived at after the party has had a full and fair hearing are not correct, or are not in accordance with established medical and legal principles or personnel policies, and substitute findings are proposed that would be substantially detrimental to the party, the party concerned shall be notified of such substitute findings. If the party submits a statement in rebuttal to the proposed findings of the Physical Review Council and after considering the statement in rebuttal the members of the Physical Review Council adhere to the proposed findings, the case shall be referred to the

the party advises the Physical Review Council that the proposed findings of the Physical Review Council are acceptable, or if, after considering the statement in rebuttal, the members of the Physical Review Council are in agreement that the recommended findings of the physical evaluation board are correct, the Physical Review Council shall forward the record of proceedings to the Secretary for final action.

(e) In any case of a party who has had a full and fair hearing and, as a result of proceedings in revision or a new hearing by a physical evaluation board, recommended findings are made, final approval of which in lieu of prior recommended findings made in the case would change final disposition in a manner substantially detrimental to the party, and a rebuttal has been filed to the last physical evaluation board action, the Council shall refer the case to the Physical Disability Review Board for further consideration unless the Council's final findings do not differ in a material respect, detrimental to the party, from the relief sought in the rebuttal.

(f) In the event the members of the Council agree, the Council may, on its own initiative, take no action on the recommended findings of the physical evaluation board and return the case to a medical board for further study, to the physical evaluation board for a hearing in revision for correction of errors, for further development of the case, for reconsideration of its recommended findings, or to a different physical evaluation board for another hearing, or to a physical evaluation board in a different area for another hearing.

(g) In the event one or more, but not all, members of the Physical Review Council are of the opinion that a case should be returned to a medical board or a physical evaluation board for any reason, a brief of the facts shall be submitted directly to the Secretary with a request for instructions as to disposition of the case.

(h) The Physical Review Council or any member thereof may at its, or his, discretion, forward any case to the Physical Disability Review Board for further consideration. The Physical Review Council shall give the party or his counsel notice of such referral with a brief statement of reasons therefor. However, a minority of the Physical Review Council may exercise the right to refer a case to the Physical Disability Review Board only when he questions a matter within the area with respect to which he is the Secretary's advisor.

§ 725.507 Rebuttals.

When the party concerned has been informed of proposed substitute findings by the Physical Review Council in accordance with § 725.506(d), he or his counsel, shall be allowed five working days to file a rebuttal after receipt of notification. The notification shall be transmitted to the party, together with a brief statment of the reasons for such proposed findings. The statement in rebuttal shall indicate whether the party does or does not concur with the proposed substitute findings of the Physical

Physical Disability Review Board. If Review Council. In cases wherein the members of the Physical Review Council are not in agreement on proposed substitute findings the statement in rebuttal shall specify which findings he is rebutting, if any. Failure to submit a statement in rebuttal within the time allowed shall be construed to mean that the substitute findings of the Council or the majority of the Council are acceptable to the party. For good cause shown and upon request, the time for filing a rebuttal may be extended in the discretion of the Council.

§ 725.508 Preparation and authentication of records.

Action by the Physical Review Council on the record of proceedings of physical evaluation boards shall be prepared in appropriate form and shall be signed by all members and the recorder.

§ 725.509 Procedure in Servicemen's Readjustment Act cases.

The Physical Review Council shall act in cases arising under section 302 of the Servicemen's Readjustment Act of 1944, as amended (10 U.S. Code 1554), in advisory capacity only and shall, in such capacity, recommend to the Secretary of the Navy that the findings of such board be approved or disapproved, or that orders be issued in the case. In the event that other than approval is recommended, the reasons therefor shall be stated. The action of the Council shall otherwise be prepared in appropriate form and shall be signed by each member acting on the case and by the recorder. It shall be transmitted to the Judge Advocate General.

§ 725.510 Action on reports of periodic physical examination of parties on the temporary disability retired list.

Upon receipt of a report of a periodic physical examination of a party on the temporary disability retired list, the Physical Review Council shall evaluate such report. If less than five years have elapsed since the date of the placement of the name of the party on the temporary disability retired list and the Council considers that no change in the status of the party is indicated, the party will be so informed by the Chief of Naval Personnel or the Commandant of the Marine Corps. If the Council considers that a change in the status is indicated, or if the period of five years from the date of the placement of the name of the party on the temporary disability retired list will soon terminate, the Council shall refer the case to a physical evaluation board for reevaluation. In the event, however, the members of the Council are in agreement that the party concerned is physically fit to perform the duties of his rank, grade or rating and the party concerned has indicated a desire to be found physically fit for the performance of his duties, the Physical Review Council shall forward the case directly to the Secretary for action without further consideration by a physical evaluation board. In addition, upon agreement by the members of the Council that the report of a periodic physical examination together with other records in the files of the Navy Department forms sufficient basis for findings on a case, the party may be notified and if the party agrees with the findings proposed by the Physical Review Council, such findings shall be forwarded to the Secretary for action without further consideration by a physical evaluation board. This latter action, however, shall not be taken by the Council unless the party concerned or his representative states in writing that the party does not demand a hearing before a physical evaluation board. If the Council's proposed findings would result in the party's permanent retirement for physical disability ratable at seventy-five percent or more, and the party fails to demand a hearing within five days, exclusive of Sundays and holidays, after receipt of the notification, the Physical Review Council shall forward the proposed findings to the Secretary for final action without further consideration by a physical evaluation board.

§ 725.511 Action when party fails to report for final scheduled periodic physical examination.

If five years will soon elapse since the date of the placement of the name of the party on the temporary disability retired list and the party has failed to report for his last periodic physical examination scheduled pursuant to Subpart I of this part, the Physical Review Council shall consider available records pertaining to the physical condition of the party concerned and, on the basis thereof, advise the Secretary whether in accordance with accepted medical principles it may be found beyond any reasonable doubt that the party concerned remains unfit to perform the duties of his rank, grade, or rating by reason of the physical disability for which he was temporarily retired and if so, the percentage which may be assigned for the disability for which the party was temporarily retired in accordance with the standard schedule of rating disabilities in current use by the Veterans Administration, assuming such physical disability to have improved to the greatest extent consonant with accepted medical principles. In lieu of the foregoing action, however, the Council may in any case arising under this section where it is reasonable to conclude that the party concerned has willfully abandoned benefits under Chapter 61, Title 10 U.S. Code, by repeated failures to report for his periodic physical examinations after receipt of proper notification or by other conduct which clearly manifests an intent to abandon such benefits, so advise the Secretary, on the basis of such evidence, that the party concerned has abandoned his rights to disability benefits pursuant to Chapter 61, Title 10 U.S. Code. Action under this section shall be prepared by the Council in such form as it may desire and shall be signed by each member acting in the case and by the recorder. It shall be transmitted to the Secretary prior to the end of the fiveyear period during which the name of the party concerned may be carried on the temporary disability retired list.

Subpart F—Naval Physical Disability Review Board

§ 725.601 Convening authority.

The Secretary of the Navy shall convene the Naval Physical Disability Review Board.

§ 725.602 Function and jurisdiction.

The Naval Physical Disability Review Board is constituted to review and report upon cases referred to it pursuant to \$725.506 and cases arising under the provisions of section 302(a) of the Servicemen's Readjustment Act of 1944 (10 U.S.C. 1554). The Board shall have the same powers as exercised by, or vested in, the board whose action is being reviewed. The Board shall consider the issues before it in conformity with accepted medical principles, pertinent law and regulation and established personnel policies.

§ 725.603 Composition.

The Physical Disability Review Board shall consist of five commissioned officers as members, three of whom shall be non-medical officers and two of whom shall be medical officers, and a recorder. In addition, except in cases arising under section 302(a) of the Servicemen's Readjustment Act of 1944, as amended, there shall be designated a counsel for the Board and appellate counsel for the party who will be required to act, however, only in cases where their services are requested by the President, or by the party whose case is being considered.

§ 725.604 Qualifications.

Each member of the Physical Disability Review Board shall be carefully selected for his competence, maturity, experience and soundness of judgment. The Recorder may be either a commissioned officer or a civilian in the employ of the Government. When the party whose case is being considered is a member or former member of the Navy, the non-medical members shall be officers of the Navy. When the party is a member or former member of the Marine Corps, the non-medical members shall be officers of the Marine Corps. When the party is a member or former member of a reserve component, at least a majority of the members of the Board present and acting in the case shall be Reserve officers, unless otherwise authorized by the Secretary of the Navy. The appointing order convening the Physical Disability Review Board may list more than five members, in which case the following provision shall be included in the order: "Only five members of this Board, three of whom shall be non-medical members and two of whom shall be medical members, are empowered to act in any one case." The senior officer shall act as Chairman.

§ 725.605 President.

The President of the Physical Disability Review Board shall, for the Secretary, monitor the entire physical disability system to insure that from an administrative standpoint it operates expeditiously and efficiently. The President shall

maintain personal liaison with the Secretary and keep him advised regarding the operation of the system.

§ 725.606 Rank of members.

While any commissioned officer is eligible for appointment to the Physical Disability Review Board, care should be taken to avoid great disparity in rank and experience. In no event may rank be permitted either to inhibit or influence junior members in expressing their opinions or in voting.

§ 725.607 Seniority.

Whenever practical, at least a majority of the board who act on a case shall be senior to the party. In the absence of objection by the party, the seniority of the members of the board shall be considered as waived.

§ 725.608 Limitation on members.

(a) No medical officer shall act as a member of the Physical Disability Review Board who has had direct charge of the case of the party or who was a member of the medical board which reported on the party. No member of a physical evaluation board, the Physical Review Council, Naval Retiring Board or Board of Medical Survey which acted in the case of the party shall act as a member of the Physical Disability Review Board in the same case.

(b) Officers of the Dental Corps, Medical Service Corps or Nurse Corps are not eligible for membership as medical members of the Physical Disability Review Board. They may be appointed and sit as non-medical members only when the party before the Board is a member of the same corps.

§ 725.609 Counsel for the Board.

. When counsel for the Board is required as provided in § 725.603, he shall be a competent, mature commissioned officer of sound judgment. He shall be a member of the bar of a Federal Court or the highest court of a state. He must be familiar with Board procedures and with the laws, regulations and instructions governing physical disability retirement and separation and physical standards. He shall be designated by the Judge Advocate General.

§ 725.610 Appellate counsel for the party.

(a) Appellate counsel for the party shall be a member of the bar of a Federal Court or the highest court of a state and shall be designated by the Judge Advocate General on the basis of his competence, maturity, experience and soundness of judgment, as well as his knowledge of the laws, regulations and instructions governing retirement or separation for physical disability.

(b) In proceedings before the Physical Disability Review Board the party concerned may be represented by civilian counsel if provided by himself or his representative at no expense to the Government or by military counsel of his own choice if personally available. In such case, the designated appellate counsel for the party, unless assistance is requested by the party or by his chosen counsel, shall not act in the case.

§ 725.611 Procedure.

(a) In cases arising under 10 U.S.C. 1554, the Physical Disability Review Board will review and report upon the findings and decisions or recommendations of any naval retiring board, naval physical evaluation board or naval medical survey board by reason of which any person who, while serving as an officer of the naval service, has been retired or released from active service without pay for disability. The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will report to the Board the cases of personnel requesting and entitled to review in accordance with § 725.612. Upon receipt of authorization for review, the recorder of the Board shall assemble all records available in the case and notify party and counsel, if any, by registered mail with return receipt requested, of the time and place of hearing. Such notice shall be placed in the mails at least thirty days in advance of the scheduled time of hearing. The proceedings of the Board under this paragraph will be conducted in accordance with the instructions and regulations which governed the proceedings of the board whose action is being reviewed, except that (1) physical examination of the individual is not mandatory, (2) the board will not make a preliminary report, (3) the medical members will not be subject to examination, and (4) the medical members will not submit a report. The Board will meet in open session for the hearing of a case and at the conclusion thereof shall meet in closed session for its deliberations and determinations. Party shall be entitled to appear in person before the Board during open sessions of the Board. He shall be entitled to be represented by counsel of his own choosing except that no expense incident thereto will be borne by the Government. A party who, after due notification of the time and place of hearing, fails to appear at the appointed time, is deemed to have waived his right to appear. Party or counsel for the party may waive in writing his right of appearance.

(b) In cases referred to the Physical Disability Review Board pursuant to § 725.506, the Board will initially review each case on the record submitted to it. Thereafter a notification will be sent by the Board to the party informing him of his rights. With that notification the Board may, in its discretion, apprise the party of the prima facie findings which the Board proposes to make based on its initial review of the record. Where the party requests to be present, either personally at no expense to the Government or through counsel, a hearing will be held. At such hearing the Board will receive such evidence, either verbal or written, as the party desires to offer. In the event that the party does not desire a hearing, he may submit such additional evidence, arguments or briefs as he may desire, which shall then be considered by the board along with all the other evidence. Upon concurrence of the majority of the membership, the Board may cause a record to be returned to a medical board or a physical evaluation board for the same reasons that it may be returned by the Physical Review istered by the recorder in the manner council. set forth in § 725.424. Not less than

§ 725.612 Petition for review.

Any officer or former officer retired or released from active service for physical disability without pay pursuant to the recommendation of a retiring board, board of medical survey, or physical evaluation board desiring a review of his case may petition for such review. Petition for review shall be in writing and shall be submitted to the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, Navy Department, Washington 25, D.C. No petition for review will be granted under these regulations unless received in the Navy Department within fifteen years after the date of release from active service or within fifteen years after June 22, 1944, whichever is later. Upon receipt of a petition for review, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall note thereon the time of receipt and will, where it appears that the Disability Review Board had jurisdiction to review the case, transmit the petition for review and any supporting documents to the President of the Board with the authorization for review.

§ 725.613 Oath.

Members of the Physical Disability Review Board convened to act in any case under § 725.612 shall be sworn as follows:

You, and each of you, do solemnly swear (or affirm) that you will honestly and impartially examine and report upon the case of _____ about to be examined by the Board.

The oath shall be administered to the members of the Board by the Recorder.

§ 725.614 Challenges.

No challenge to the members of the Physical Disability Review Board, other than a challenge for cause, will be entertained by the Board. Procedure for challenging shall be the same as for members of a court of inquiry.

§ 725.615 Evidence.

The Physical Disability Review Board shall consider all documentary evidence transmitted to it by proper authority. The Board may, in addition, require and examine such records as may be in the files of the Navy Department that relate to the issues before the Board. All evidence having a probative value as to the determination of issues before the Board may be considered, without limitation by the restriction of the technical rules of evidence. The Board shall receive any additional evidence party may present. Witnesses shall be permitted to present evidence either in person or by affidavit. All witnesses before the Board shall be subject to cross-examination by party. his counsel, the recorder in cases considered under § 725.611(a), or counsel for the board in cases considered under § 725.611(b). Members of the Board may question witnesses. Party may submit a statement, either oral or in writing, to the Board or take the stand as a witness, or may be called as a witness by the Board. All oral testimony shall be taken under oath or affirmation adminset forth in § 725.424. Not less than three days prior to the date set for hearing, all records and papers pertaining to the case shall be made available to party or his counsel, as appropriate, who shall have the right to inspect such records and papers and to make notes therefrom. Party or his counsel may, in writing, waive the right to such three-day inspection period. Party, if available, may be examined physically by the medical members of the Board or by a medical officer detailed by the Surgeon General. The report of such examination, either oral or in writing, may be placed before the Board in the same manner as other evidence.

§ 725.616 Continuances.

The Physical Disability Review Board may continue a hearing on its own motion or at the request of party or his counsel if a continuance appears necessary to insure a full and fair hearing.

§ 725.617 Findings or opinions and decision or recommendation.

The findings or opinions of the Physical Disability Review Board in cases arising under 16 U.S.C. 1554 shall relate to the time petitioner was retired or released from active service and shall contain a statement showing whether the decision or recommendation or the board being reviewed is affirmed or reversed. The findings or opinions and decision or recommendation of the Board shall be made in closed session in each case. Findings, opinions, recommendations or decisions, as appropriate, shall be made in accordance with the phraseology set forth in §§ 725.618 to 725.621.

§ 725.618 Review of Naval Retiring Board action.

(a) Permanent Regular Officer. In the case of a petitioner who at the time of his discharge without pay for physical disability was a permanent Regular officer, the following phraseology shall be employed:

Ex-Ensign John (n) Doe, U.S. Navy, (was or was not) incapacitated for active service at the time of his release from active service [If not so incapacitated, no further finding is required; if so incapacitated, continue as follows.] by reason of (state the cause of incapacity), his incapacity (was or was not) permanent and (was or was not) the result of an incident of the service.

(b) Permanent Reserve Officer. In the case of a petitioner who at the time of his release or retirement without pay for physical disability was an officer of a Reserve component serving under a permanent appointment, the following phraseology shall be employed:

Ex-Ensign John (n) Doe, U.S. Naval Reserve, (did or did not) suffer disability in line of duty while employed during a period of service contemplated by Section 4 of the Act of 27 August 1940, as amended (34 U.S. Code 855c-1). [If he did not so suffer disability, no further finding is required; if he did so suffer disability, continue as follows.] He (was or was not) incapacitated for active service at the time of his release from active service [If not so incapacitated, no further finding is required; if so incapacitated, continue as follows.] by reason of (state the cause of incapacity), his incapacity (was or

was not) permanent and (was or was not) the result of an incident of the service.

(c) Temporary Regular or Reserve Officer. In the case of a petitioner who at the time of his release or retirement without pay for physical disability was a Regular or Reserve officer serving under a temporary appointment, the following phraseology shall be employed:

Ex-Warrant Officer John (n) Doe, U.S. Marine Corps, while on the active list of the Marine Corps, (did or did not) incur physical disability while serving under a temporary appointment in the rank of warrant officer subsequent to ______, the date of (Date)

his temporary appointment and prior to

(Date). ment was revoked [If he did not so incur disability, no further finding is required; if he did so incur disability, continue as follows.]; he (was or was not) incapacitated for active service at the time of his release from active service [If not so incapacitated, no further finding is required; if so incapacitated, continue as follows.] by reason of (state the cause of incapacity), his incapacity (was or was not) permanent and (was or was not) the result of an incident of the service. His physical disability (was or was not) incurred in line of duty in time of war or national emergency during a period of service contemplated by Section 3 of the Act of 24 July 1941, as amended (34 U.S. Code 350g).

§ 725.619 Disability which existed at the time of appointment.

In addition to the applicable finding in § 725.618, when the Board reviews a case in which the evidence indicates that the disability which incapacitates petitioner existed at the time of his appointment, an additional finding in two parts shall be made and the following phraseology shall be employed:

The disability suffered by him had its origin while he was serving as an (state whether enlisted man, midshipman or officer).

He became patently incapacitated for active service (prior or subsequent) to his permanent appointment as an officer.

§ 725.620 Review of board of medical survey action.

(a) Considerations: As in the case of a board of medical survey, the Physical Disability Review Board in its review and report concerning the action thereon is limited to an expression of opinions and a recommendation. However, such opinions and recommendations will necessarily involve considerations such as those required to be set forth as "findings" in § 725.618; i.e., the petitioner's status at the time of his separation from active service as a permanent or temporary Regular or Reserve Officer; and further, his physical condition at such time as respects his fitness for duty, and if unfit, the nature and origin of his disability.

(b) The following phraseology shall be employed:

Ex-Ensign John (n) Doe, U.S. Naval Reserve, was (fit or unfit) for active service at the time of his release from active service [If fit for active service, continue as follows.] and should not have been ordered before a retiring board or physical evaluation board prior to his release from active service [If unfit for active service, continue as follows.] by reason of (state disability causing unfit-

ness) which (was or was not) incurred within the contemplation of the applicable retirement law then in effect and (should or should not) have been ordered to appear before a retiring board or physical evaluation board prior to his release from active service.

(c) Recommendation: The following phraseology shall be employed:

The Board recommends, therefore, that the petitioner [If opinion is that he should have been ordered to appear before a retiring board or physical evaluation board, continue as follows.] be authorized to appear before a physical evaluation board [If opinion is that he should not have been ordered to appear before a retiring board or physical evaluation board, continue as follows.] be not authorized to appear before a physical evaluation board.

§ 725.621 Review of naval physical evaluation board action.

(a) In physical evaluation board cases arising under 10 U.S.C. 1554, phraseology as required under §§ 725.425 to 725.431, as appropriate, shall be used; however, the recommended findings shall relate to the date of release or retirement from active service and the record shall so state.

(b) In cases referred to the Physical Disability Review Board pursuant to § 725.506, the Board shall render an advisory opinion for the Secretary of the Navy as to the appropriate recommended findings upon which it considers that final disposition should rest.

§ 725.622 Minority opinions, findings, recommendations or decisions.

Any dissenting member of the Physical Disability Review Board shall make a minority report on those particulars in which he dissents. Such report shall be included in the record of proceedings of the Board.

§ 725.623 Preparation of record of proceedings.

The record of proceedings of the Physical Disability Review Board shall be prepared in accordance with Chapter III, Naval Supplement to the Manual for Courts-Martial, insofar as practicable. The record shall include a verbatim transcript of the testimony of all witnesses and shall contain a copy of all documentary evidence before the Board. The registered mail receipt and notification shall be appended to the record. The record of proceedings shall be signed by the President of the Physical Disability Review Board and the recorder.

§ 725.624 Forwarding of record of proceedings.

The record of proceedings of the Physical Disability Review Board in cases arising under 10 U.S.C. 1554 shall be forwarded to the Judge Advocate General for transmission to the Secretary. In cases considered pursuant to § 725.506, the record of proceedings shall be forwarded to the Secretary of the Navy.

Subpart G—Final Action and Relief From Final Action

§ 725.701 Action by the Judge Advocate General.

(a) The Judge Advocate General shall for the Secretary approve the recom-

mended findings of Physical Evaluation Boards without further review of any kind when:

(1) The Physical Review Council concurs unanimously in the recommended findings of the Physical Evaluation Board.

(2) The majority of the Physical Disability Review Board agrees with the majority of the Physical Review Council.

(b) In those cases in which the majority of the Physical Disability Review Board disagrees with the majority of the Physical Review Council, the Judge Advocate General shall review the record and make specific recommendations as to the legality of the various findings and then forward the record to the Secretary of the Navy for final decision. The Judge Advocate General's comments are to be limited exclusively to opinions as to legality and to policy matters of importance.

(c) In cases arising under Section 302 of the Servicemen's Readjustment Act of 1944 as amended (10 U.S.C. 1554), the Judge Advocate General shall review the case and, limiting comment to the legality of the proceedings and recommended findings of the Board, forward the record with his comments to the Secretary for decision.

$\$ 725.702 Action by the Secretary of the Navy.

(a) After considering the record of proceedings and recommended findings of a physical evaluation board, forwarded in accordance with § 725.701, the Secretary of the Navy will make determinations in conformity with the applicable law and will direct the disposition of the party whose case has been considered.

(b) The Secretary of the Navy, after considering the record of proceedings and findings of a board convened in a case arising under Section 302 of the Servicemen's Readjustment Act of 1944, as amended (10 U.S.C. 1554), will approve or disapprove or issue orders in such case.

§ 725.703 Effective date of retirement.

(a) The effective date of retirement for physical disability following approval of the recommended findings of a physical evaluation board shall be specified by the Chief of Naval Personnel or the Commandant of the Marine Corps. The date to be specified shall be the date upon which all administrative procedures incident to retirement are completed, but no later than the first day of the month following the month during which retirement is approved.

(b) Poor prognosis cases. When an individual is to be retired for a disability which will almost certainly result in his death in the near future, a special situation is encountered. The survivors of such a member may benefit if retirement antedates death. Benefits under the Uniform Services Contingency Option Act as amended (10 U.S.C. 1431-1444) can not accrue until retirement. In addition when death occurs within a period of 120 days following release from active duty, the death gratuity may be paid. In order to insure that the beneficiaries of members having a poor prognosis may be eligible for maximum

benefits under the law, it is the responsibility of the Counsel of the physical evaluation board, The Physical Review Council, or the Counsel of the Physical Disability Review Board, as appropriate, to insure that the case is handled in the most expeditious manner and that the reviewing authorities are informed at the earliest date practicable that the prognosis is poor in the case and whether the member concerned has made an election under the Uniform Services Contingency Option Act.

(c) Early retirement or discharge at the election of the member. Whenever a member, for personal reasons, desires that his retirement or discharge be effected at the earliest possible date, he may submit a request in writing to the Physical Review Council that his retirement or discharge be effected without delay upon completion of review and final action on the record of proceedings of the Physical Evaluation Board.

§ 725.704 Retirement for other reasons.

Any member who meets all qualifications for physical disability retirement but who is also qualified for retirement for other reasons may prior to the effective date of retirement request that the Secretary take no action on the record of proceedings of the physical evaluation board in his case in order that the member may request and be retired for reasons other than physical disability.

§ 725.705 Relief from final action.

Upon execution of the direction of the Secretary of the Navy as to disposition of a case which has been considered pursuant to this subpart, such action becomes final and may not be changed, modified, set aside or reopened except upon one or more of the grounds, and in the manner, hereinafter set forth.

(a) Clerical mistakes. Clerical mistakes or mathematical miscalculations in the orders affecting disposition or other parts of the record of proceedings may be corrected by the Secretary at any time on his own initiative or upon the petition of the individual whose case has been considered or any cognizant authority of the Naval Establishment after such notice, if any, as the Secretary may direct.

(b) Other grounds for relief. Upon notice to the individual concerned and opportunity for hearing thereon or upon petition of the individual concerned, the Secretary may, in his discretion, change or modify or may set aside his action directing the disposition of the individual and direct new proceedings in his case for the following reasons:

(1) Newly discovered evidence. Upon the presentation of newly discovered evidence which by due diligence could not have been presented prior to the effective date of disposition of the individual concerned, which relates to a fact in existence at the time of such disposition, which is not merely cumulative or corroborative and not such as merely to affect the weight of the evidence or the credibility of the witnesses, and which would have warranted a different action had it been presented:

(2) Fraud, misrepresentation, or other misconduct. Upon a showing that the

directed disposition of an individual was based upon the fraud, misrepresentation of material fact, or other misconduct of a party of such nature that in the absence thereof a different action would have been taken; and

(3) Mistake of law. When it appears that the directed disposition of an individual was based upon a mistake of law which resulted in either an assumption of jurisdiction beyond the authority granted by law or a refusal to assume jurisdiction within the authority granted by law.

§ 725.706 Procedure for obtaining relief.

(a) Clerical mistakes. A clerical mistake or mathematical miscalculation which does not affect the disposition of the individual or change the computation of his disability retirement pay on the basis of percentage of disability may be corrected by the Secretary without notice. If the correction of the error would affect the disposition or so change the computation of disability retirement pay, the individual shall be given reasonable notice and afforded an opportunity to be heard, if he shall request it, before such correction is made. Relief sought by an individual under this paragraph shall be by petition addressed to the Secretary setting forth the error complained of and the relief desired.

(b) Relief on other grounds. relief is sought on the grounds set forth in § 725.705(b) the individual concerned, his legal representative or the cognizant authority of the Naval Establishment shall address a petition to the Physical Review Council. The petition must be filed within five years from the effective date of the individual's disposition and shall set forth the relief desired and the grounds for such relief. When the petition is based upon evidence not of record in the Navy Department, such evidence shall be filed with the petition. The Physical Review Council, upon consideration of such petition, shall make recommendations to the Secretary of the Navy relative to granting such relief.

(c) Hearings upon petition for relief. If the Physical Review Council, upon the consideration of a petition for relief, shall deem it necessary that hearings be held upon any such petition, it may direct any physical evaluation board to hold such hearings, the record of which, without recommendations, shall be forwarded to the Physical Review Council.

(d) Effect of filing petition for relief and action thereon. The filing of any petition for relief shall not affect the directed disposition of an individual or suspend its operation until and unless the Secretary of the Navy shall so direct. Neither the action of the Secretary of the Navy upon a petition for relief nor any action taken by him pursuant to the proceedings on the reopening of a case shall operate to extend the time for application for review of the original disposition by a statutory board.

Subpart H—Physically Restricted Personnel

§ 725.801 General considerations.

Members of the naval service who are unable to perform full duty because of

physical disability may be retained on the active list provided the following requirements are satisfied:

(a) The member requests retention in writing.

(b) His disability would not jeopardize the health of his associates.

(c) The health of the member will not be jeopardized by performing limited duty.

(d) The evaluee possesses a useable skill or potential skill which can be successfully applied in spite of his physical handicap.

(e) The retention of such a member can be expected to contribute to the effectiveness and the efficiency of the naval service.

§ 725.802 Primary objective.

The prime objective of this policy is to conserve manpower by salvaging needed experiences and skills. This policy is not designed to provide employment for the physically handicapped. Its successful application will depend on a realistic appraisal of the medical and personnel factors involved in each case.

§ 725.803 Procedures.

(a) When a member has been admitted to the sick list and is considered physically qualified to perform limited duty but temporarily not physically qualified to perform unrestricted duty, he shall generally be reported upon by a board of medical survey in accordance with Chapter 18 of the Manual of the Medical Department.

(b) If the disability is of such a nature that recovery is not anticipated and if it is not expected that the member will qualify physically for full duty after a reasonable period of convalescence or limited duty, the commanding officer shall determine whether the member desires to be retained on active duty for the performance of limited duty.

(c) If the member requests retention on active duty for performance of limited duty, he should be reported upon by a board of medical survey; otherwise, he should appear before a medical board in accordance with Subpart C.

(d) In each instance when a member requests retention for limited duty he shall be advised that his retention is contingent upon meeting the requirements outlined in § 725.801, and that the final determination as to whether he will be retained for the performance of limited duty or ordered to appear before a physical evaluation board rests with the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

§ 725.804 Disposition of physically restricted members.

(a) When physically restricted members who have been retained on active service under the provisions of this subpart become unable to perform their duties properly because of physical disability, they shall be admitted to a naval hospital for observation, treatment, and appropriate disposition.

(b) Physically restricted members will not be separated without processing by a physical evaluation board unless the member recovers from the disability for which he was placed in a limited duty status.

Subpart I—Disposition of Members Whose Names Are Carried on the Temporary Disability Retired List

§ 725.901 Periodic physical examina-

(a) 10 U.S. Code 1210 requires that members whose names have been placed on the Temporary Disability Retired List shall be given physical examinations at least once every 18 months. The Chief of Naval Personnel or Commandant of the Marine Corps shall issue appropriate orders for such examinations.

(b) Failure of a member to report for any periodic physical examination after receipt of proper notification may result in the termination of his disability retirement pay. However, if the member shows good cause for the failure to report, the payments may be reinstated and may be made retroactive for a period

of not over 1 year.

- (c) Members who have waived retirement pay in order to receive compensation from the Veterans Administration are still members of the naval service and are required to undergo periodic physical examinations when ordered by the Chief of Naval Personnel or Commandant of the Marine Corps. Failure to report for physical examinations as ordered may result in the suspension of their retirement pay account. The retirement pay account, so suspended, may not be reopened when the member later wishes to reelect to receive retired pay by reason of a decrease in, or termination of, his Veterans Administration compensation.
- (d) Members who are ordered to submit to a physical examination will be reimbursed for travel performed upon submission of a claim and presentation of their orders, properly endorsed.
- (e) The periodic physical examination should be conducted with the same scrupulous care and thoroughness as the examinations done preliminary to appearance before a medical board. This examination should include an evaluation of any disabilities which have been incurred since temporary retirement, as well as those disabilities present at the time of retirement.
- (f) Whenever inpatient observation is desirable or necessary for a proper evaluation, admission and retention as an inpatient for a period of 10 days is authorized. This length of inpatient observation may be extended upon the authorization of the Chief of Naval Personnel or the Commandant of the Marine Corps. It is particularly important that admission as an inpatient be effected for proper evaluation of neuropsychiatric cases.
- (g) The report of periodic physical examination shall be prepared in letter form as prescribed in § 725.305. It should contain an accurate interval history and a report of all clinical evaluations and laboratory studies done.
- (h) Reports of periodic physical examination shall not contain any opinions

as to the member's fitness or unfitness for duty; as to whether the disability for which retired has changed in any way or remains the same; nor shall such reports contain any recommendation as to whether the member should be continued on the Temporary Disability Retired List, ordered to appear before a Physical Evaluation Board, discharged, or returned to duty.

(i) The report of periodic physical examination should contain a statement as to whether personal appearance of the member before a physical evaluation board would be deleterious to his physical or mental health, and whether disclosure of information to the member relative to his physical or mental condition would adversely affect his physical or mental health.

(j) The report of periodic physical examination should be signed by the medical officer designated to conduct the examination and, unless the orders for the examination otherwise direct, should be transmitted to the Physical Review Council by way of the Commanding Officer.

§ 725.902 Termination of temporary disability retirement.

- (a) If, as a result of any periodic physical examination, it is determined by the Physical Review Council that the disability of the member concerned has become stabilized, that is, that no further improvement or deterioration of the disability may normally be expected within the period the member can be carried on the Temporary Disability Retired List, the member will then be reevaluated by a physical evaluation board, except as provided in § 725.510. After reevaluation, one of the following types of disposition of his case will be made:
- (1) Retention on the Temporary Disability Retired List
 - (2) Permanent retirement
- (3) Discharge with or without severance pay
 - (4) Fit for return to duty.
- (b) In the event the member is to be retained on the Temporary Disability Retired List, he will continue to be examined at intervals of 18 months. However, he must be finally reevaluated before the end of the 5-year period when final disposition must be made of his status.
- (c) If his disability is ratable at less than 30 per centum but continues to render him unfit for return to duty, and if the member has served less than 20 years active duty, he will be discharged with severance pay.

(d) If the member has recovered from his disability to a degree that he is fit to perform his duties, the following may

apply:

(1) An enlisted member of a Regular component shall, subject to his consent, be reenlisted in his Regular component; if an officer in a Regular component, he shall, subject to his consent, be recalled to active duty and, as soon as practicable, be reappointed to the active list of his Regular component, even if this means that there will be a temporary increase

'in the number of officers authorized for his grade.

(2) A member of a Reserve component shall, subject to his consent, be reappointed or reenlisted, as the case may be, in his Reserve component,

§ 725.903 Appointment, reappointment, enlistment, or reenlistment.

Any such appointment, reappointment. enlistment, or reenlistment shall be in a rank, grade, or rating not lower than the rank, grade, or rating permanently held by the member at the time his name was placed on the Temporary Disability Retired List, and may be in the rank, grade, or rating immediately above the rank, grade, or rating permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank, grade, or rating, or will be credited with such years of service as the Secretary of the Navy may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for his placement on the Temporary Disability Retired List.

§ 725.904 Regular officer.

An officer in a Regular component shall have his disability retirement pay terminated on the date of his recall to active duty, and his status on the Temporary Disability Retired List terminated on the date of his reappointment on the active list.

§ 725.905 Regular enlisted member.

An enlisted person of a Regular component shall have both his status on the Temporary Disability Retired List and his disability retirement pay terminated on the date of his reenlistment in the Regular component of which he was a member before being placed on the Temporary Disability Retired List.

§ 725.906 Reserve officer or enlisted member.

A member of a Reserve component, whether officer or enlisted person, shall have his status on the Temporary Disability Retired List and his disability retirement pay terminated on the date of his reappointment or reenlistment in a Reserve component, as the case may be.

§ 725.907 Disposition when member does not consent to reappointment or reenlistment.

If a member does not consent to his reappointment or reenlistment, his status on the Temporary Disability Retired List and his disability retirement pay shall be terminated as soon as is practicable.

By direction of the Secretary of the Navy.

[SEAL] CHESTER WARD,
Rear Admiral, U. S. Navy,
Judge Advocate General of the Navy.
August 4, 1959.

[F. R. Doc. 59-6579; Filed, Aug. 10, 1959; 8:46 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS IN DOMESTIC ANIMALS

Designation of Modified Certified Brucellosis-Free Areas, Public Stockyards, and Slaughtering Establishments

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1834, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 114a–1, 120, 121, 125), § 78.13 of said regulations designating modified certified brucellosis-free areas is amended in the following respects:

1. The paragraph headed "Arizona" is amended to read:

Arizona: The entire State;

2. The paragraph headed "Arkansas" is amended to read:

Arkansas: Baxter, Benton, Boone, Carroll, Calhoun, Clark, Cleburne, Columbia, Dallas, Faulkner, Fulton, Garland, Grant, Hempstead, Hot Spring, Independence, Izard, Johnson, Lafayette, Madison, Marion, Montgomery, Nevada, Newton, Ouachita, Perry, Pike, Polk, Pope, Saline, Scott, Searcy, Sharp, Stone, Van Buren, Washington, and Yell Counties;

3. The paragraph headed "California" is amended to read:

California: Alpine, Colusa, Del Norte, Humboldt, Inyo, Lassen, Marin, Modoc, Mono, Shasta, Sierra, Siskiyou, Tehoma, Trinity, and Yolo Counties;

· 4. The paragraph headed "Colorado" is amended to read:

Colorado: Alamosa, Archuleta, Chaffee, Conejos, Costilla, Custer, Delta, Denver, Dolores, Eagle, Garfield, Gunnison, La Plata, Logan, Mesa, Montezuma, Montrose, Ouray, Phillips, Pitkin, Rio Grande, Saguache, San Juan, San Miguel, and Sedgwick counties; Southern Ute Indian Reservation and Ute Mountain Ute Reservation;

5. The paragraph headed "Georgia" is amended to read:

Georgia: Appling, Atkinson, Bacon, Baldwin, Baker, Banks, Barrow, Ben Hill, Berrien, Brantley, Brooks, Bryan, Bullock, Burke, Butts, Candler, Carroll, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Coffee, Colquitt, Columbia, Cook, Crawford, Dade, Dawson, De Kalb, Dodge, Douglas, Early, Echols, Effingham, Elbert, Evans, Fannin, Forsyth, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Haralson, Hart, Heard, Irwin, Jackson, Jefferson, Jeff Davis, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Liberty, Lincoln, Lowndes, Long, Lumpkin, Madison, Marion, Meriwether, Miller, Monroe, Montgomery, Oconee, Oglethorpe, Pualding, Peach, Pickens, Pierce,

Pike, Polk, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Talbot, Tattnall, Taylor, Telfair, Tift, Toombs, Towns, Truetlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkinson, and Worth Counties;

6. The paragraph headed "Idaho" is amended to read:

Idaho: Ada, Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Camas, Canyon, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Gem, Gooding, Idaho, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falis, Valley, and Washington Counties; and Fort Hill Indian Reservation;

7. The paragraph headed "Illinois" is amended to read:

Illinois: Boone, Bond, Bureau, Champaign, Clay, Clinton, Coles, Cook, Gumberland, DeKalb, DuPage, Edgar, Effingham, Ford, Greene, Grundy, Kane, Kankakee, Kendall, Lake LaSalle, Lawrence, Lee Livingston, McHenry, McLean, Macon, Monroe, Moultrie, Ogle, Perry, Stephenson, Vermilion, Wabash, Will, Woodford, and Winnebago Counties;

8. The paragraph headed "Indiana" is amended to read:

Indiana: Adams, Allen, Benton, Blackford, Brown, Cass, Clark, Clay, Clinton, Crawford, Daviess, Dearborn, Decatur, DeKalb, Delaware, Dubois, Elkhart, Floyd, Fulton, Grant, Hancock, Harrison, Howard, Huntington, Jay, Lagrange, Lake, LaPorte, Madison, Marion, Marshall, Martin, Noble, Orange, Parke, Perry, Pike, Porter, Posey, Pulaski, Randolph, Rush, Shelby, St. Joseph, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Vanderburgh, Vermillion, Vigo, Wabash, Warrick, Wells, and Whitley Counties;

9. The paragraph headed "Kentucky" is amended to read:

Kentucky: Anderson, Bracken, Calloway, Campbell, Elliott, Graves, Greenup, Hopkins, Jackson, Johnson, Lawrence, Metcalfe, Morgan, Rockcastle, Rowan, Simpson, Todd, Trigg, Trimble, Warren, and Wolfe Counties;

10. The paragraph headed "Mississippi" is amended to read:

Mississippi: Alcorn, Attala, Benton, Choctaw, Clay, Forrest, George, Greene, Hancock, Harrison, Itawamba, Jackson, Jasper, Jefferson Davis, Jones, Lamar, Lee, Monroe, Newton, Neshoba, Oktibbeha, Perry, Pike Pontotoc, Prentiss, Smith, Tippah, Tishomingo, Union, Walthall, Winston, and Yalobusha Countles;

11. The paragraph headed "Missouri" is amended to read:

Missouri: Andrew, Barry, Bollinger, Boone, Butler, Cape Girardeau, Carroll, Chariton, Christian, Dade, Dent, Douglas, Franklin, Greene, Jackson, Jasper, Jefferson, Lawrence, Monroe, Montgomery, Oregon, Osage, Perry, Pettis, Putnam, Ralls, Ray, Reynolds, Ripley, St. Charles, St. Francois, St. Genevieve, Shelby, Texas, Washington, Webster, Worth, and Wright Counties;

12. The paragraph headed "Montana" is amended to read:

Montana: Beaverhead, Blaine, Carbon, Carter, Cascade, Chouteau, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lincoln, McCone, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powell, Prairie, Rivalli, Richland, Roosevelt, Sanders, Sheridan, Stillwa-

ter, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Countles;

13. The paragraph headed "New York" is amended to read:

New York: Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chenango, Chemung, Clinton, Columbia, Cortiand, Delaware, Dutchess, Essex, Franklin, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Nassau, Niagara, Madison, Montgomery, Onondaga, Orange, Oswego, Otsego, Putnam, Rensselaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Steuben, Suffolk, Sullivan, Tioga, Ulster, Warren, Washington, Wayne, and Westchester Counties;

14. The paragraph headed "Ohio" is amended to read:

Ohio: Athens, Belmont, Carroll, Columbiana, Cuyahoga, Fulton, Guernsey, Hancock, Henry, Hardin, Hocking, Jackson, Mahoning, Meigs, Monroe, Morrow, Morgan, Noble, Ottawa, Paulding, Putnam, Scioto, Seneca, Shelby, Tuscarawas, Van Wert, Vinton, Washington, Wood, and Wyandot Counties;

15. The paragraph headed "Oregon" is amended to read:

Oregon: The entire State;

16. The paragraph headed "Tennes-see" is amended to read:

Tennessee: Anderson, Bedford, Benton, Bledsoe, Bradley, Campbell, Carroll, Carter, Cheatham, Chester, Claiborne, Clay, Cocke, Coffee, Davidson, Decatur, DeKalb, Dickson, Dyer, Fentress, Franklin, Gibson, Giles, Greene, Grundy, Hamilton, Hancock, Hardeman, Hardin, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, Marion, McNairy, Macon, Macison, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Sequatchie, Scott, Shelby, Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicol, Union, Van Buren, Washington, Wayne, Weakley, Williamson, and Wilson Counties;

17. The paragraph headed "Virginia" is amended to read:

Virginia: Accomack, Alleghany, Arlington, Bath, Bedford, Bland, Brunswick, Buchanan, Buckingham, Caroline, Charles City, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Essex, Fairfax, Giles, Gloucester, Hanover, Henrico, Highland, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Lee, Loudoun, Mathews, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Orange, Page, Prince William, Princess Anne, Rappahannock, Richmond, Rockingham, Scott, Southampton, Spotsylvania, Stafford, Surry, Sussex, Westmoreland, Wise, Wythe, and York Counties, and City of Hampton;

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 13, 65 Stat. 693; 21 U.S.C. 111–113, 114a–1, 120, 121, 125; 19 F.R. 74, as amended; 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon publication in the Federal Register.

The amendment adds certain areas to those designated as modified certified brucellosis-free areas, which additional areas have been determined to come within the definition of § 78.1(i).

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and should be

made effective promptly in order to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 6th day of August 1959.

> F. J. MULHERN, Acting Director, Animal Disease Eradication Division, Agricultural Research Service.

[F.R. Doc. 59-6615; Filed, Aug. 10, 1959; 8:50 a.m.]

SUBCHAPTER K-HUMANE SLAUGHTER OF LIVESTOCK

PART 180-DESIGNATION OF **METHODS**

Additional Designation of Humane Method of Slaughter and Handling

Pursuant to the authority conferred by the Humane Slaughter Act of 1958 (7 U.S.C. 1901 et seq.), the introductory paragraph of § 180.5 of the regulations relating to humane slaughter of livestock (9 CFR 180.5; 24 F.R. 1549) is hereby amended to read as follows:

§ 180.5 Chemical; carbon dioxide.

The slaughtering of sheep, calves and swine with the use of carbon dioxide gas and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the act.

(Sec. 4, 72 Stat. 863; 7 U.S.C. 1904; 19 F.R. 74. as amended)

This amendment designates as a humane method of slaughtering and handling calves under the Humane Slaughter Act, the method of slaughtering with use of carbon dioxide gas and handling previously designated under the act as humane with respect to sheep and swine. Designations of methods under the act become mandatory for purposes of section 3 of the act on June 30, 1960, with respect to United States Government contracts for procurement of meat and meat food products, but prior to said date such designations are advisory and may be adopted by the livestock slaughtering industry on a voluntary basis.

The designation of the carbon dioxide method for calves was recommended to the Department by the Advisory Committee established under the act. The Department has given the matter careful consideration and it does not appear that new information would be made available to the Department by public rulemaking procedure. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public pro-

cedure with respect to the amendment are unnecessary.

Done at Washington, D.C., this 6th day of August 1959.

> M. R. CLARKSON, Acting Administrator, Agricultural Research Service.

[F.R. Doc. 59-6616; Filed, Aug. 10, 1959; 8:51 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign Commerce, Department of Commerce

[9th Gen. Revision of Export Regs.; Amdt. 21 1

PART 371-GENERAL LICENSES

PART 372-PROVISIONS FOR INDI-VIDUAL AND OTHER VALIDATED LICENSES

PART 373—LICENSING POLICIES AND RELATED SPECIAL PROVISIONS PART 374—PROJECT LICENSES PART 377—TIME LIMIT (TL) LICENSES

Miscellaneous Amendments § 371.9 [Amendment]

1. Section 371.9 General License GIT: in-transit shipments, paragraphs (a) and (b) are amended to read as follows:

(a) General provisions. (1) A general license designated GIT is hereby established, authorizing, subject to the other provisions of this section, the exportation from the United States of commodities which originate in and are destined to any foreign country; provided that such commodities are moving in transit through the United States under a Transportation and Exportation (T. & E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a United States customhouse.

(2) Commodities which originate in a foreign country include commodities which were originally grown, produced, or manufactured in the United States but which have been so altered by further processing, manufacture, or assembly in the foreign country that such commodities have either thereby been substantially enhanced in value, or have lost their original identity with respect

to form.

(3) Only those exportations of foreign origin which, if of United States origin, could be made respectively to Hong Kong, Macao, Poland (including Danzig), or a Subgroup A country, under the provisions of a general license, may be exported to Hong Kong, Macao, Poland (including Danzig), or a Subgroup A country, respectively, under General License GIT.

Note: 1. A commodity is not considered as "moving in transit" within the meaning of

General License GIT if it is covered by a warehouse entry and withdrawn from warehouse under a withdrawal-for-exportation customs entry or if its transit is broken by a warehousing or processing operation under another type of customs entry.

2. General License GIT is not applicable to exportations of commodities licensed by agencies of the United States Government other than the Department of Commerce.

3. See § 370.6 of this chapter regarding shipments moving in transit via the United States without unloading from the carrier.

(b) Special provisions for shipments originating in Canada. (1) The provisions of General License GIT are applicable, as modified herein, to all shipments from Canada, regardless of origin of the commodities included in the shipment, moving in transit through the United States to any foreign destination, including Hong Kong, Macao, and Subgroup A destinations. The United States Collector at the United States port of exit shall require, and the shipper shall submit to him, a copy of Canadian Customs Entry, Form B13, certified or stamped by the Canadian customs authorities, for each such shipment. Positive List commodities may be exported from the United States under General License GIT only as authorized in the certified or stamped Canadian Customs Entry, Form B13. Where the ultimate destination or any other pertinent detail of such shipment is not the same on the U.S. Shipper's Export Declaration as that shown on the Canadian Customs Entry, Form B13, a validated U.S. export license or a new Form B13 authorizing the shipment is required. However, non-Positive List commodities may be exported under any general license applicable to the exportation of the same commodities of domestic origin whether or not there is a change of ultimate destination while the shipment is in transit. Non-Positive List commodities authorized by the Canadian Customs Entry, Form B13, for export to Hong Kong, Macao, or Subgroup A destinations may proceed in transit through the United States under General License GIT according to that authorization. Other shipments of non-Positive List commodities to Hong Kong, Macao, or Subgroup A destinations, not authorized to such a destination by the accompanying Canadian Customs Entry. Form B13, require a validated U.S. export license of a new Form B13 authorizing such an exportation.

(2) Any parties to the exportation shall submit any further proof which the Collector at the United States port of entry or at the port of exit may require to enable him to determine that the shipment is properly exportable under General License GIT, including the fact that the destination of the shipment is properly authorized by the Canadian authorities. An exportation shall not be cleared for shipment by the Collector at the United States port of exit under General License GIT unless all provisions of this general license have been complied with.

§ 371.18 [Amendment]

2. Section 371.18 General License GLR; return of certain commodities imported into the United States, paragraphs (a) Commodities sent to the

This amendment was published in Current Export Bulleting 818, dated August 6,

United States for repair and (e) Civil aircraft and aircraft equipment sent from the United States for repair or overhaul are amended to read as follows:

(a) Commodities sent to the United States for inspection, testing, calibration or repair. (1) Any commodity which has been sent to the United States for inspection, testing, calibration or repair may be exported under this general license to the country from which it was sent, except as indicated in subparagraph (2) of this paragraph. The commodity returned may include replacement or rebuilt parts which are necessary to repair the commodity.

(2) The provisions of this paragraph

do not apply to:

(i) Exportations to Kong Kong, Macao, and Subgroup A destinations.

(ii) Commodities disposed of by United State government agencies under foreign excess property disposal programs.

(e) Civil aircraft and aircraft equipment sent from the United States for inspection, testing, calibration, repair or (1) Civil aircraft, or civil overhaul. aircraft equipment, parts, accessories or components which were manufactured in a foreign country may be exported under this general license to the country from which originally imported into the United States or to the country in which manufactured for the purpose of being inspected, tested, calibrated, repaired or overhauled and returned to the United States, except that no exportation may be made under this paragraph to Hong Kong, Macao, or a Subgroup A destination. Any commodity exported under this general license shall be returned to the United States as soon as the repair or overhaul is completed.

(2) Where civil aircraft or civil aircraft equipment, parts, accessories or components are returned to the country of manufacture and this is not the same country as the one from which imported into the United States the name and address of the manufacturer shall be shown on the Shipper's Export Declaration in addition to the other information

required by this section.

§ 371.25 [Amendment]

- 3. Section 371,25. General License GATS; aircraft on temporary sojourn is amended by heading and numbering the present Note following paragraph (b) as 1. Non-return to the United States and adding another note to read as follows:
- 2. Aircraft licensed by the Department of State. The provisions of General License GATS do not apply to aircraft under licensing authority of the Department of State. These aircraft are described on the United States Munitions List. The departure of such aircraft must in all cases comply with the export regulations of the Department of State.

§ 372.12 [Amendment]

4. Section 372.12 Reexportation from country of destination is amended in the following respects:

a. Paragraph (a) (2) is amended by adding the words "or Liechtenstein" after the word "Switzerland" wherever it appears in that subparagraph.

b. Paragraph (a) (4) is amended to read as follows:

(4) Special provisions for requests to reexport to or from specified destinations. In addition to the requirements set forth in subparagraphs (2) and (3) of this paragraph, the request for authority to reexport shall include the following:

(i) If the export was made, or will be made, from the United States to Switzerland or Liechtenstein under a validated export license, and the commodity(ies) covered is to be reexported from Switzerland or Liechtenstein, the request shall include the name and address of each person or firm to whom reexportation will be made, the quantity and value of the commodities to be reexported to each person or firm, and the number and date of the Swiss Blue Import Certificate(s) which was submitted in support of the application for license to export the commodities from the United States.

(ii) If the reexportation is to be made to any one of the following countries (regardless of the country to which the commodities were originally shipped from the United States), additional information shall be furnished as set forth in (a) and (b) of this subdivision.

Cambodia. Singapore, Hong Kong. of. Indonesia Subgroup A coun-Tans. tries. Switzerland. Lebanon. Liechtenstein. Thailand. Viet-Nam, Republic Macao. of. Malaya, Federation Yugoslavia. of. Poland (including

Danzig).

(a) The name and address of each person or firm to whom reexportation will be made, and the commodity description, quantity, and value of the commodities which will be reexported to each such person or firm, and

(b) Consignee/purchaser statement or other documentation from the new ultimate consignee which would be required by Part 373 of this chapter if the reexportation were a direct export from the United States to the new coun-Where this document is a Yugoslav End Use Certificate or a Swiss Blue Import Certificate, and the same document must be furnished to the export control authorities of the country from which reexportation will be made, the Bureau of Foreign Commerce will accept a reproduced copy of the document being furnished to the country of reexportation.

(iii) Where the request for reexportation authorization described in subdivisions (i) or (ii) of this subparagraph is approved by the Bureau of Foreign Commerce, the U.S. exporter shall advise his foreign consignee of the amount of reexportation and name of person or firm to whom the reexportation has been approved.

c. Paragraph (b) Permissive reexportations is amended to read as follows:

(b) Permissive reexportations. The following reexportations of United States origin commodities may be made without the need for obtaining prior authorization from the Bureau of Foreign Commerce (for reexportation of technical data see § 385.6 of this chapter):

(1) Reexportations between the United Arab Republic (Egypt Region) and United Arab Republic (Syria

Region).

(2) Reexportations between the Colony of Signapore and the Federation of Malaya.

(3) Reexportations between Switzer-

land and Liechtenstein.

(4) Reexportations between ultimate consignees covered by the terms of a project license (see § 374.10 of this chapter).

(5) For export control purposes the destination "Italy" includes the area of Trieste under Italian civil administration, and the destination "Yugoslavia" includes the area of Trieste under Yugoslav civil administration. Therefore, a reexportation authorization issued by the Bureau of Foreign Commerce which permits reexportation to Italy automatically includes the area of Trieste under Italian civil administration, and similarly and authorization issued by the Bureau of Foreign Commerce which permits reexportation to Yugoslavia automatically includes the area of Trieste under Yugoslav civil administration.

(6) Any commodity which has been exported from the United States may be reexported from any destination to any other destination; provided that at the time of reexportation, the commodities to be reexported may be exported directly from the United States to the new country of destination either (i) under General License GO, GRO, G-PUB, GHK, or GISA, or (ii) where the value of the reexportation does not exceed the GLV dollar-value limit shown on the Positive List with reference to the country of destination.

5. Section 373.49 Machinery and parts is amended to read as follows:

§ 373.49 Machinery and parts.1

Applications for licenses to export machinery, equipment and apparatus, with the processing codes CONS, ELME, FINP, GIEQ, RARA, SATE, TOOL, and TRAN must include the following identifying information in addition to the requirements of § 372.4(e) of this chapter.

(a) A copy of manufacturer's current catalog or bulletin, or pertinent pages therefrom describing the commodity, unless previously furnished.

(b) For commodities having a rated capacity, show maximum rating.

(c) For machinery, equipment, or apparatus, if production and exportation can not be completed within six months, the Bureau of Foreign Commerce will consider the issuance of a license with a

¹Parts, accessories, and equipment, which are to be scrapped are classified as scrap (e.g., Schedule B Nos. 60030-60095, 63005, 64130, and 64400). See § 399.2 of this chapter, Int. 10.

validity period of one year. In these instances, the exporter shall enter this request in the space entitled "Additional Information" on the Form FC-419, or on an attachment thereto explaining the circumstances upon which the request is based, and giving the approximate date of availability for export.

(d) An application for a license to export ball or roller bearings, or balls for bearings (Schedule B Nos. 76910, 76920 and 76933) to a Subgroup A destination or Poland (including Danzig) shall include the following information in addition to the other information required by the provisions of this section:

(1) For exportations of ball or roller

bearings

(i) The name of the manufacturer (ii) The bearing number as listed in the manufacturer's catalog

(iii) The inner bore diameter of the bearing:

(2) For exportations of balls for bearings

(i) The type of metal

(ii) The grade of the ball (in accordance with standards adopted by the Anti-Friction Bearing Manufacturers' Association)

(iii) The basic size of the ball.

§ 373.65 [Amendment]

- 6. Section 373.65 Ultimate consignee and purchaser statements, paragraph (c) Information required in consignee statements is amended by substituting the word "two" for the word "four" where it appears in the next to the last sentence of subdivision (i) of subparagraph (1).
- 7. Section 373.67 Switzerland is amended in the following particulars:
- a. The title of the section and paragraph (a) (1) Submission of certificate and (5) Certificate as a factor in licensing are amended to read as follows:

§ 373.67 Switzerland and Liechtenstein.

- (a) Import certificate requirement-(1) Submission of certificate. A license application for export of commodities to Switzerland or Liechtenstein must be accompanied by the original Swiss Blue Import Certificate issued to the importer by the Swiss Federal Department of Public Economy, Division of Commerce, Import and Export Control, covering the proposed exportation from the United States. Where the Import Certificate covers commodities for which more than one license application is submitted, the original of the Swiss Blue Import Certificate shall be attached to the first such application. Each subsequent application shall include the following certification in the space entitled "Additional Information," or on an attachment thereto:
- I (We) certify that the quantities of commodities shown on all export licenses based on the Swiss Blue Import Certificate No.

 -----, when added to the quantities shown on all additional applications pending in the Bureau of Foreign Commerce based on the same Certificate, including the present application, do not total more than the quantities shown on that Certificate. This Swiss Blue Import Certificate was submitted

in support of application No.

*

(BFC case No. or if BFC case No. is unknown, the applicant's reference No., date of submission of application to which the Swiss Blue Import Certificate was attached, and Schedule B Nos. and processing codes shown on that application)

*

- (5) Certificate as a factor in licensing. The Department of Commerce reserves the right in all respects to determine to what extent any license shall be issued covering commodities for which the Swiss Government has issued an Import Certificate. Generally commodities licensed by the Bureau of Foreign Commerce on the basis of dollar value will not be licensed in excess of the dollar value shown on the Swiss Blue Import Certificate and commodities licensed on the basis of units of measure will not be licensed in excess of the units shown on the Certificate. The Department of Commerce will not seek or undertake to give consideration to recommendations from the Government of Switzerland or Liechtenstein as to the United States exporter whose license application should be approved. A Swiss Blue Import Certificate will be used by the Bureau of Foreign Commerce as only one of the considerations upon which licensing action will be based, since quotas, end uses, etc., must remain important factors in export licensing.
- b. Paragraph (b) (2) Shipments to the Swiss Government is amended to read as follows:
- (2) Shipments to government agencies. Applications for licenses to export commodities to Swiss or Liechtenstein Government agencies are exempted from the requirement to submit a Swiss Blue Import Certificate where the government agency actually placed the order with the applicant and will accept delivery of the exportation when it is received in Switzerland or Liechtenstein.

Note: For definition of "government agency", see § 373.65(a) (2) (iv).

- c. The first two sentences of paragraph (c) Return of Blue Import Certificate are amended to read as follows: "The Swiss Blue Import Certificate provides that the importer has pledged himself directly to import the commodities into the Swiss customs territory and that any reexportation of these goods is prohibited. If the importer is unable to obtain the commodities covered by a Swiss Blue Import Certificate, he is required by the Swiss Government to produce evidence of such inability."
- 8. Section 374.2 Commodities subject to project license is amended to read as follows:

§ 374.2 Commodities subject to project license.

The project licensing procedure is applicable to all Positive List commodities for which a validated license is required, except complete aircraft, either assembled or knocked down.

¹Applicants who propose to export a complete aircraft, either assembled or knocked down, must apply for an individual validated license for the aircraft. However, a project license may be used, where applicable, to export related parts, accessories, or components for the aircraft.

9. Section 377.2 Commodities subject to TL license is amended to read as follows:

§ 377.2 Commodities subject to TL license.

The commodities which may be exported under the Time Limit (TL) license procedure are all RO commodities on the Positive List of Commodities, except complete aircraft either assembled or knocked down.

² Applicants who propose to expose a complete aircraft, either assembled or knocked down, must apply for an individual validated license for the aircraft. However, a TL license may be used, where applicable, to export related parts, accessories, or components for the aircraft.

This amendment shall become effective as of August 6, 1959 except that Parts 5, 8 and 9 shall become effective August 13, 1959.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023. E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director,
Bureau of Foreign Commerce.

[F.R. Doc. 59-6599; Filed, Aug. 10, 1959; 8:48 a.m.]

[9th Gen. Revision of Export Regs.; Amdt. P.L. 141]

PART 399—POSITIVE LIST OF COM-MODITIES AND RELATED MATTERS

Product Division Jurisdiction Over Processing Codes

Section 399.4 Appendix D—Groups of commodity processing codes is amended to read as follows:

§ 399.4 Appendix D—Product Division jurisdiction over processing codes.

For purposes of submission of multiple transactions consignee and purchaser statements (§ 373.65 of this subchapter) by applicants for export licenses, the Commodity Processing Code symbols, as shown on the Positive List (§ 399.1) have been arranged in two groups, corresponding to the two Bureau of Foreign Commerce product divisions that license the commodities:

Aircraft, Agriculture, Chemicals, and Fuels Division

AGRI	DRUG	ORGN	SALT
AGSU	ELME	PETR	TEXT
COAL	FINP	RESN	TRAN
COTA	GFTS	RUBR	

Industrial, Scientific, and Technical Division

CONS	NONF	SATE	TNPL
GIEQ	RARA	STEE	TOOL
MINL			

This amendment shall become effective as of August 6, 1959.

¹This amendment was published in Current Export Bulletin 818, dated Augúst 6, 1959.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023, E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,

Director, Bureau of Foreign Commerce.

[F.R. Doc. 59-6600; Filed, Aug. 10, 1959; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX-PUBLIC LAND ORDERS

[Public Land Order 1934]

[Oregon 04617]

OREGON

Partly Revoking Public Land Order No. 1546 of November 7, 1957

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Public Land Order No. 1546 of November 7, 1957, reserving lands for use of the Forest Service as administrative sites, is hereby revoked so far as it affects the following-described lands in the Rogue River National Forest.

WILLAMETTE MERIDIAN

DIAMOND LAKE ADMINISTRATIVE SITE

T. 28 S., R. 5 E., unsurveyed Sec. 32, N½NE½, N½S½NE½, Totaling 120 acres.

At 10:00 a.m. on September 9, 1959, the lands shall be open to such forms of appropriation as may by law be made of national forest lands.

FRED G. AANDAHL,
Assistant Secretary of the Interior.

August 4, 1959.

[F.R. Doc. 59-6589; Filed, Aug. 10, 1959; 8:47 a.m.]

[Public Land Order 1935] [82675]

OREGON

Modifying Boundaries of Umatilla National Forest

By virtue of the authority vested in the President by section 1 of the act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473), and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The following-described lands are hereby excluded from the area now within the Umatilla National Forest, Oregon, and the boundaries of the said forest are modified accordingly:

WILLAMETTE MERIDIAN

T. 4 N., R. 37 E., Sec. 12, S½; Sec. 13, N½NE¼, NW¼; Sec. 24, NW¼NW¼. T. 5 N., R. 37 E.,

Sec. 25, NE¼, W½; Sec. 26, NW¼NE¼, N½NW¼, NE¼SE¼; Sec. 35, SE¼SE¼.

Sec. 35, SE/4SE/4.
T. 4 N., R. 38 E.,
Sec. 6, lots 2, 3, 4, 5, 6, 7, SW!/4NE!/4,
SE!/4NW!/4, E!/2SW!/4, and W!/2SE!/4;
Sec. 7, lots 1, 2, 3, NW!/4NE!/4, E!/2NW!/4,
NE!/2SW!/4.

T. 5 N., R. 38 E., Secs. 30 and 31.

The areas described aggregate approximately 3,295 acres of patented lands.

FRED G. AANDAHL,
Assistant Secretary of the Interior.

AUGUST 4, 1959.

[F.R. Doc. 59-6590; Filed, Aug. 10, 1959; 8:47 a.m.]

[Public Land Order 1936] [Colorado 028726]

COLORADO

Partially Revoking Reclamation Withdrawal of September 14, 1937 (Colorado-Big Thompson Project)

By virtue of the authority vested in the Secretary of the Interior by section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

The Departmental order of September 14, 1937, which withdrew lands in Colorado for reclamation purposes in the first form in connection with the Colorado-Big Thompson Project, is hereby revoked so far as it affects the following-described lands:

SIXTH PRINCIPAL MERIDIAN

T. 2 S., R. 80 W.

Sec. 12, S1/2 NE1/4, SE1/4 NW1/4 and NE1/4 SE1/4.

The areas described aggregate 160 acres.

The lands are patented, with minerals reserved to the United States (Act of December 29, 1916; 39 Stat. 862; 43 U.S.C. 291-301), as amended. Any leasable minerals have been open to applications and offers. The locatable minerals, if any, shall be subject to location under the United States mineral laws and the regulations in 43 CFR 168.6, at 10:00 a.m. on September 9, 1959.

FRED G. AANDAHL,
Assistant Secretary of the Interior.

AUGUST 4, 1959.

[F.R. Doc. 59-6591; Filed, Aug. 10, 1959; 8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications
Commission

[Docket No. 12858; FCC 59-832]

PART 3—RADIO BROADCAST SERVICES

Television Broadcast Stations; Milwaukee-Whitefish Bay, Wis.

1. The Commission has before it for consideration its Notice of Proposed Rule Making, released in this proceeding on April 23, 1959 (FCC 59-386), inviting comments on the proposal of Independent Television, Inc., licensee of Station WITI-TV on Channel 6 at Whitefish Bay, Wisconsin, for the shift of Channel 6 from Whitefish Bay to Milwaukee, Wisconsin.

2. Petitioner, Independent Television, Inc., filed comments in support of the proposal. No comments opposing the

proposal were filed.

3. Whitefish Bay is a small community—its population totalled 14,655 persons in 1950—located about five miles to the north of Milwaukee on the western shore of Lake Michigan. It is a part of the Milwaukee Urbanized Area and in Milwaukee County, which has been designated by the Bureau of the Census as the Milwaukee Metropolitan District. A part of the City of Milwaukee, to the west of Whitefish Bay, extends approximately as far north as Whitefish Bay. Channel 6, the only television channel assigned to Whitefish Bay, was assigned in December of 1953 after rule making in Docket No. 10713. The then-existing rules governing minimum assignment spacing requirements precluded the assignment of the channel to Milwaukee. The amendment, adopted in July of 1956 to § 3.611 of the rules, which permits the assignment of channels in communities which do not meet the required spacings where transmitter sites are available which meet the spacing and other requirements of the rules, now makes it technically feasible to assign Channel 6 directly to Milwaukee.

4. Petitioner has demonstrated in its comments that all technical allocation requirements of the rules could also be fully met if Station WITI were to operate as a Milwaukee station instead of a Whitefish Bay station on Channel 6 from the station's present transmitter site, which is 6.7 miles north of Whitefish Bay near Mequon, Wisconsin, and about 12 miles from downtown Milwaukee. Station WITI-TV's antenna site is the same as that authorized for the Milwaukee Channel 10 educational station, WMVS-TV. The two stations share a common tower, and their transmitters are in adjacent buildings. From this location, Station WITI-TV now puts the required minimum field intensity signal over all of Milwaukee. Petitioner urges that a station operating on Channel 6 in the small community of Whitefish Bay must necessarily depend in large part upon Milwaukee and adjacent suburban areas for audience and revenue and compete with the two commercial VHF stations in Milwaukee for this audience and revenue.

5. The Commission has authorized similar shifts of television channels from small communities to nearby large communities in several allocation proceedings upon determining that the existing minimum separation requirements made possible the assignment of the channel

¹ Notably, in Docket No. 12255, where Channel 4 was shifted from Irwin to Pittsburgh, Pennsylvania; in Docket No. 11839, where Channel 5 was shifted from Old Hickory to Nashville, Tennessee, and in Docket No. 11840, where Channel 13 was moved from Warner Robins to Macon, Georgia.

to the larger city and that the requested channel shift would make for a more effective utilization of the available facility and would serve the public interest. We reach the same determination on the subject proposal to shift Channel 6 from Whitefish Bay to Milwaukee.

6. Authority for the adoption of the amendment is contained in sections 4(i), 301, 303 (c), (d), (f) and (r), and 307 (b) of the Communications Act of 1934,

as amended.

- 7. In view of the foregoing: It is ordered, That, effective September 8, 1959, the Table of Assignments contained in § 3.606 of the Commission's rules and regulations, is amended, insofar as the communities named are concerned as follows:
- (a) Amend the entry under the State of Wisconsin to read as follows:

Citu Channel No. Milwaukee____ 4-, 6, *10+, 12, 18+, 24+, 30

(b) Delete the following entry under the State of Wisconsin:

Channel Cita Whitefish Bay....

- 8. It is further ordered, That, effective September 8, 1959, pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding li-cense held by Independent Television, Inc., for Station WITI-TV, is modified to specify operation on Channel 6 at Milwaukee instead of Whitefish Bay, Wisconsin, subject to the following conditions: .
- (a) Independent Television, Inc., should advise the Commission by writing

by September 8, 1959, whether it accepts the modification of its license for operation of Station WITI-TV at Milwaukee: and

(b) Independent Television. should submit to the Commission by September 8, 1959, all necessary information for the preparation of a modified authorization specifying Milwaukee, Wisconsin, as the station location.

Adopted: July 29, 1959. Released: July 31, 1959.

> FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-6606; Filed, Aug. 10, 1959; 8:50 a.m.]

Title 50—WILDLIFE

Chapter I—Fish and Wildlife Service. Department of the Interior

SUBCHAPTER F-ALASKA COMMERCIAL FISHERIES

PART 108—KODIAK ÂREA PART 115-SOUTHEASTERN ALASKA AREA

Miscellaneous Amendments

Basis and purpose. Announcement was made at the public hearings on proposed regulations for 1959 that unless pink salmon were more abundant than anticipated in the Kodiak area, it would be necessary to curtail the season. It is now apparent that the season must be shortened immediately to secure needed escapement.

Herring continue to be abundant in certain areas in Southeastern Alaska. In addition the population is composed primarily of 6 year old fish, which will be removed from the fishery by natural mortality unless harvested now.

For the above reasons, the following

actions are taken:

1. Section 108.5 is amended by deleting "August 13" wherever it appears and substituting in lieu thereof "August 7".

2. Section 115.54 is amended in paragraph (b) by adding a third proviso reading as follows: "Provided further, That after August 9, 10,000 short tons may be taken in the area between the latitudes of Swain Point and Point Gardner west of a line from Point Cornwallis to Point Gardner, in Chatham Strait".

Since immediate action is necessary notice and public procedure on these amendments are impracticable and they shall become effective immediately upon. being filed at the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.).

(Sec. 1, 43 Stat. 464, as amended; 48 U.S.C. 221)

Dated: August 7, 1959.

DONALD L. MCKERNAN, Director. Bureau of Commercial Fisheries. [F.R. Doc. 59-6651; Filed, Aug. 7, 1959; 4:37 p.m.]

proposed rule making

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 13149; FCC 59-866]

CERTAIN ANNUAL REPORTS FORMS Investment of Pension and Benefit **Funds**

In the matter of amendment of Annual Reports Form M for Class A and Class B Telephone Companies, Form O for Wire-Telegraph and Ocean-Cable Carriers, and Form R for Radiotelegraph Carriers, to revise the schedules showing information regarding the investment of pension and benefit funds; Docket No. 13149.

1. Column (c) of Schedule 60D, Investment of Pension and Benefit Funds, in Annual Report Form M for Class A and Class B Telephone Companies calls for the face or par value of investments of the pension and benefit funds. American Telephone and Telegraph Company (AT&T) and the Bell System companies did not furnish the par value of capital stocks in their pension funds in their 1958 annual reports. In lieu thereof they reported the total number

of shares of stock owned which has been verbally referred to as the only meaningful data which were readily available. Prior to 1958, the trustee of the pension funds of the Bell System companies, with the exception of The Cincinnati and Suburban Bell Telephone Company and The Southern New England Telephone Company, did not invest in stocks. Many stocks do not have par value and for those stocks having par value the par value has relatively little significance. It seems probable that when Schedule 60D was designed it was not expected that there would be much investment of pension funds in stocks. The total number of shares of stock is also not significant information with respect to a group of stocks of various types having a wide spread in cost and value per share.

2. The Commission is now faced with the question of what information should be required to be furnished in column (c) of Schedule 60D in the telephone company reports for 1959 and subsequent years. Inasmuch as neither the par value of capital stock nor the number of shares thereof appear to furnish data useful from a regulatory or public information standpoint, it is proposed to amend this Schedule. It appears that face value of debt securities is significant information and should be retained.

However, it is believed that more useful information-would be obtained if data were required to be reported with respect to the market value of all investments. Inasmuch as exact market values as of a given date might not be readily available with respect to all investments, it is proposed to specify approximate market value.

3. In view of the foregoing, it is proposed to amend Schedule 60D in Annual Report Form M by (1) redesignating column (c) as column (d) and revising the caption to read "Face Value of Bonds and Notes," (2) redesignating columns (d), (e), and (f) as columns (e), (f), and (g), and (3) inserting a new column (c) with a caption reading "Approximate market value." Columns (c), (d), (e), and (f), as redesignated, will appear under the present main caption reading "Fund at End of the Year." In instruction 4 to Schedule 60D the reference to column (f) would be changed to column

4. Inasmuch as Schedule 338d in Annual Report Form O for Wire-Telegraph and Ocean-Cable Carriers and Schedule 338d in Annual Report Form R for Radiotelegraph Carriers likewise require showing the face or par value of investments of the pension and benefit funds. it is also proposed to amend these Schedules, effective for 1959 and subsequent years, in the same manner as hereinbefore indicated with respect to Schedule 60D of Annual Report Form M.

5. This Notice of Proposed Rule Making is issued under authority of sections 4(i) and 219 of the Communications Act

of 1934, as amended.

6. Any interested party who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form proposed herein, may file with the Commission on or before September 15, 1959, a statement or brief setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments or briefs in reply to the original comments or briefs may be filed within ten days of the last day for filing said original comments or briefs. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for filing such additional comments is established. The Commission will consider all such comments that are presented before taking action in the matter and, if any comments are submitted which appear to warrant the holding of oral argument, notice of the time and place of such oral argument will be given.

7. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and fourteen copies of all statements or briefs filed shall be furnished to the Commission.

Adopted: August 5, 1959. Released: August 6, 1959.

> FEDERAL COMMUNICATIONS COMMISSION.

[SEAL] MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-6607; Filed, Aug. 10, 1959; 8:50 a.m.]

[47 CFR Parts 7, 8, 9, 10, 11, 16, 19]

[Docket No. 13083; FCC 59-844]

TECHNICAL STANDARDS GOVERNING GRANT OF APPLICATIONS FOR USE OF MICROWAVE FREQUENCIES FOR PRIVATE COMMUNICATIONS SYSTEMS, EXCLUDING BROAD-**CASTERS**

Notice of Proposed Rule Making

1. Notice is hereby given of proposed rule making covering technical standards to govern the granting of applications for the use of microwave frequencies above 952 Mc. for private communications systems, excluding broadcasters.

2. The current rules governing the several Safety and Special Radio Services, except for the Aviation Service, provide for the granting of authorizations for such private microwave systems on a developmental basis. The Commission, this date, has adopted a Report and Order in the proceeding in Docket No. 11866, In the Matter of the Allocation of frequencies in the Bands above 890

Mc., among other things, looking toward the issuance of authorizations for such systems on a regular basis. The proposed standards will, upon finalization, govern the grant of authorizations for such private microwave systems until such time as rules and standards are promulgated for the use of microwave frequencies on a regular basis in each of the respective Safety and Special Radio Services.

3. The proposed standards, which are set forth in the Appendix hereto, are issued under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

4. Any person who is of the opinion that the proposed standards should not be adopted, or should not be adopted in the form set forth herein, and any person desiring to support this proposal, may file with the Commission on or before August 24, 1959, a written statement or brief setting forth his comments. Comments in reply to the original comments may be filed within ten days from the last day for filing said original data, views, or arguments. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and, if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

5. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs or comments shall be furnished the Commission.

Adopted: July 29 1959.

Released: August 6, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS

Secretary.

Frequency band mc.	Power 1 (watts)	Toler- ance percent	Band- width	Beam- width 3
952-060	3 18 15 12 12 7 7 5 5	.0005 .0005 .0005 .0005 .005 .005 .005	100 kc 4 8 mc 4 mc (6) 4 mc 25 mc 10 mc 25 mc 20 mc 50 mc 50 mc	20° 10° 10° (°) 10° 7° 5° 3.5° 2° (°)

1 Maximum rated power output of transmitter. Power in excess of that shown herein will be authorized only under exceptional circumstances, based upon a factual showing of need. For pulsed systems average power shall be limited to the values shown, peak power shall not exceed five times this limit.

2 Maximum occupied bandwidth of emission which will be authorized.

3 Maximum beamwidth of major lobe between 0.5 power points in horizontal plane. Exceptions may be granted for stations in remote areas or until harmful interference is caused to other stations operating in accordance with these provisions.

4 Additional adjacent channels may be authorized upon a factual showing of need therefor; however, bandwidths in excess of 500 ke will not be authorized.

4 Subject to no protection from ISM equipment on 2450 Me.

⁶ To be specified in authorization.
⁷ Limited to mobile operations and temporary service between fixed points.

[F.R. Doc. 59-6603; Filed, Aug. 10, 1959; 8:49 a.m.1

I 47 CFR Parts 7, 8, 9, 10, 11, 16, 19] [Docket No. 13083; FCC 59-864]

TECHNICAL STANDARDS GOVERNING GRANT OF APPLICATIONS FOR USE OF MICROWAVE FREQUENCIES FOR PRIVATE COMMUNICATIONS SYSTEMS, **EXCLUDING BROAD-CASTERS**

Supplemental Notice of Proposed Rule Making

The above-captioned rule making proposal, adopted July 29, 1959, is hereby supplemented for purpose of clarification expressly to provide that comments are desired concerning the proposed interim rules governing technical standards to be applied in the issuance of authorizations for private microwave systems in the Aviation Services, as well as the other Safety and Special Radio Services. Accordingly, any person who desires to submit comments as to the applicability of such standards to the issuance of authorizations for private microwave systems in the Aviation Services (as well as in each of the other Safety and Special Radio Services) should file comments within the time and with the number of copies specified in such rule making proposal.

Adopted: August 4, 1959. Released: August 6, 1959.

> FEDERAL COMMUNICATIONS COMMISSION,

MARY JANE MORRIS. [SEAL]

Secretary.

[F.R. Doc. 59-6604; Filed, Aug. 10, 1959; 8:49 a.m.]

NOTICES

DEPARTMENT OF DEFENSE

Department of the Army

KENNETH B. COATES

Notice of Appointment and Statement of Personnel Business Interests

Employment without compensation under section 710(b) of the Defense Production Act.

Pursuant to section 101(a) of Executive Order 10647 (section 710(b) of the Defense Production Act of 1950 as amended) notice is hereby given of the appointment of Mr. Kenneth B. Coates on July 1, 1959 in the Department of the Army. Mr. Coates is serving as Chief of the Detroit Ordnance District, Detroit, Michigan.

Mr. Coates is presently retired.

Mr. Coates' statement of his personal business interests is attached.

Dated: August 5, 1959.

JOHN W. MARTYN, Administrative Assistant.

¹ See F.R. Doc. 59-6605 in Notices section, infra.

STATEMENT OF PERSONAL BUSINESS INTERESTS

(a) The names of any corporation of which I am, or within 60 days preceding my appointment, have been an officer or director

Edgar Corp., 1341 Wanda Avenue, Ferndale 20, Mich., Executive Vice President, Secretary, and Director.

B/W Controller Corp., East Maple Road, Birmingham, Mich., Secretary and Director. Gulf & Western Corp., Grand Rapids, Mich., Director and Stockholder.

Buell Die and Machine Co., 3545 Scotten, Detroit, Mich., Director and Stockholder.

(b) The names of any corporation in which I own, or within 60 days preceding my appointment, have owned, any stocks, bonds, or other financial interests

Edgar Corp., 1341 Wanda Avenue, Ferndale, Mich., Stockholder.

B/W Controller Corp., East Maple Road,

Birmingham, Mich., Stockholder. National Steel Corp., Grant Building,

Pittsburgh, Pa., Stockholder. Gulf & Western Corp., Grand Rapids, Mich.,

Director and Stockholder. Shamrock Oil & Gas Co., Amarillo, Tex.,

Stockholder. Pubco Petroleum Corp., Albuquerque, N. Mex., Stockholder.

Detroit Edison Co., Detroit, Mich., Stock-

J. C. Penney Co., Stockholder. Buell Die & Machine Co., 3545 Scotten, Detroit, Mich., Stockholder.

(c) The names of any partnerships in which I am, or within 60 days preceding my appointment, have been a partner

None.

(d) The names of any other businesses in which I own, or within 60 days preceding my appointment have owned, any similar interest

Real Estate: Livingston County, Brighton, Mich.

Insurance: Northwestern Mutual, Equitable, Travellers.

KENNETH B. COATES.

JAN. 4, 1959.

[F.R. Doc. 59-6578; Filed, Aug. 10, 1959; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service CONECUH COOPERATIVE STOCKYARD ET AL.

Proposed Posting of Stockyards

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Conecuh Cooperative Stockyard, Evergreen, Ala.

Atwater Livestock Auction Co., Atwater, Calif. Freeno County Farm Bureau Sales Yard, Fresno, Calif.

Kings County Farm Bureau Sales Yard, Hanford, Calif.

Maclin-Caldwell Auction Co., Colton, Calif. Madera County Farm Bureau Sales Yard, Madera, Calif.

Modesto Livestock Commission Co., Modesto, Calif.

Orland Livestock Commission Yard, Orland,

Petaluma Livestock Commission Co., Petaluma, Calif. Roseville Livestock Auction Yard, Roseville,

Calif. San Jacinto Livestock Auction Co., San

Jacinto, Calif.

Santa Ynez Valley Sales Yard, Buellton, Calif.

Templeton Sales Yard, Templeton, Calif. Trev. Moore Sale Yard, Corona, Calif.

Tulare County Farm Bureau Sales Yard, Visalia, Calif.

Tulare Sales Yard, Inc., Tulare, Calif. Turlock Sales Yard, Turlock, Calif.

Valley Livestock Marketing Association, Dixon, Calif.

Valley Livestock Marketing Association, Red Bluff, Calif.

Willows Livestock Commission Co., Willows,

Kite Stockyard, Kite, Ga.

Middle Georgia Livestock Sales Co., Jackson, Ga.

South Georgia Livestock Co., Inc., Tifton, Ga. Central Iowa Livestock, Inc., Rippey, Iowa. Sauk Centre Sale Barn, Sauk Centre, Minn. Slayton Livestock Sales Pavilion, Slayton, Minn.

Willmar Sheep & Cattle Auction Sales, Willmar. Minn.

Worthington Livestock Sale Co., Worthington, Minn.

Taney County Live Stock Auction, Forsyth, Mo.

Elko Livestock Sales, Elko, Nev.

Midwest Livestock Commission Co., Cattle Road, Fallon, Nev.

Nevada Livestock Commission Co., Sparks, Nev.

Jasper-Brookeland Livestock Auction, Jasper, Tex.

Lampasas Auction, Inc., Lampasas, Tex. Nacogdoches Livestock Commission Co., Nacogdoches, Tex.

North Texas Livestock Commission Co., Bonham, Tex.

Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 5th day of August 1959.

> JOHN C. PIERCE, Acting Director, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 59-6595; Filed, Aug. 10, 1959; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary LOUIS A. SCHLUETER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the Federal Register during the last six months:

A. Deletions: No change. B. Additions: No change.

This statement is made as of August 1,

LOUIS A. SCHLUETER.

AUGUST 1, 1959.

[F.R. Doc. 59-6596; Filed, Aug. 10, 1959; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 27-19]

DEPARTMENT OF THE NAVY, MILI-TARY SEA TRANSPORTATION SERV-

Notice of Proposed Issuance of Byproduct, Source and Special Nuclear Material License To Dispose of Radioactive Waste in the Oceans

Please take notice that the Atomic Energy Commission proposes to issue a Byproduct, Source and Special Nuclear Material License to the Department of the Navy, Military Sea Transportation Service, Washington 25, D.C., substantially in the following form, authorizing the disposal of waste byproduct, source and special nuclear material in the Pacific and Atlantic Oceans at a minimum depth of 1,000 fathoms unless within fifteen (15) days after filing of this notice with the Federal Register Division a motion of intervention and a request for a formal hearing is filed with the Commission in the manner prescribed by Title 10, Code of Federal Regulations, Chapter 1, Part 2, "Rules of Practice". There is also set forth below a memorandum submitted by the Division of Licensing and Regulation which summarizes the principal factors considered in reviewing the application for a license. The license application is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 31st day of July 1959.

For the Atomic Energy Commission.

H. L. PRICE, Director, Licensing and Regulation. [License No. 8-5301-1 (F61)]

Pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR Part 30, "Licensing of Byproduct Material", 10 CFR Part 40, "Control of Source Material", and 10 CFR Part 70, "Special Nuclear Material", and in reliance upon the statements and representations contained in the application dated April 3, 1959, including documents incorporated by reference, hereinafter referred to as "the application", a license is hereby issued to the Department of the Navy, Military Sea Transportation Service, Washington 25, D.C., to receive, possess, and dispose of prepackaged byproduct, source and special nuclear material.

This license shall be deemed to contain the conditions specified in section 183 of the Atomic Energy Act of 1954, as amended, and is subject to the provisions of 10 CFR Fart 20, "Standards for Protection Against Radiation", all other applicable rules, regulations, orders of the Atomic Energy Commission now or hereafter in effect, and to the following conditions:

1. No Military Sea Transportation Service vessel engaged in waste disposal operations shall contain more than 100 curies of byproduct material, 500 pounds of source material and 5 grams of special nuclear material at any one time.

2. Byproduct, source, and special nuclear material shall be received and disposed of by, or under the direct supervision of, designated officers as specified in the application.

3. The licensee shall receive only pre-packaged material which is prepackaged for sea disposal by properly authorized AEC licensees or contractors.

4. The licensee shall receive, possess and dispose of the byproduct, source and special nuclear material in accordance with the procedures described in the application, except as provided otherwise in this license.

5. A copy of the licensee's operating procedures designated as "Radioactive Waste Disposal Bill" and "MSTSLANT Notice 3540" shall be supplied to each employee of the licensee involved in the receipt and disposal of byproduct, source and special nuclear material.

6. The licensee shall not accept disposal containers which do not meet the following requirements:

A. The radiation level at any accessible surface of the container shall not exceed 200 mrem/hr.

B. At one meter from any point on the radioactive source the radiation level shall not exceed 10 mrem/hr.

C. Each container shall be durably and visibly labeled with the following information:

(1) The name and address of the AEC licensee or contractor.

(2) Date packaged.

(3) Amount of radioactivity in millicuries.

(4) Most hazardous radioisotope.

D. Each container shall be labeled with the following information:

(1) Radiation caution sign as required by §§ 20.203(f) (1) and (2) of 10 CFR Part 20. (2) Radiation level at the surface of the container and at one meter from the source.

7. The licensee shall dispose of byproduct, source and special nuclear material at a minimum depth of 1,000 fathoms in the Atlantic Ocean within 5 miles of
(1) Parallel of 41°33' north latitude, me-

ridian of 65°30' west longitude,

(2) Parallel of 36°30' north latitude, me-

ridian of 74°18' west longitude, or
(3) Parallel of 38°30' north latitude, meridian of 72°06' west longitude,

And at a minimum depth of 1,000 fathoms in the Pacific Ocean within 5 miles of

(1) Parallel of 32°00' north latitude, me-

ridian of 121°30' west longitude,

(2) Parallel of 37°40' north latitude, meridian of 124°50' west longitude, or

(3) Other locations in the Pacific Ocean when approved by the Commission.

8. The licensee shall notify the Chief. Isotopes Branch, Division of Licensing and Regulation, Atomic Energy Commission, at least 20 days prior to each disposal, by letter deposited in the United States mail properly stamped and addressed, of the proposed date for disposal, the total number of containers, the total activity of byproduct material in millicuries, the amount of source material in pounds, the amount of special nuclear material in grams, and the most hazardous radioisotope contained in each container.

This license shall be effective on the date issued and shall expire on June 30, 1961.

Date of issuance:

For the Atomic Energy Commission.

MEMORANDUM

By application dated April 3, 1959, and amendments thereto, the Military Sea Transportation Service, Washington 25, D.C., requested a license to receive, possess and dispose of pre-packaged low-level byproduct, source and special nuclear material wastes in the Pacific and Atlantic Oceans.

Based on the consideration set forth in this memorandum the Atomic Energy Commission has found that:

(a) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger of life or property;

(b) The applicant is qualified by training and experience to conduct the proposed waste disposal service for byproduct, source and special nuclear material in such a manner as to protect health and minimize danger of life or property;

(c) The issuance of a byproduct, source and special nuclear material license to the Military Sea Transportation Service will not be inimical to the health and safety of the public.

Experience of personnel. The licensed material will be under the control of the Commander, Military Sea Transportation Service, who has designated certain officers to be responsible for carrying out the waste disposal operations. The designated officers have received training in radiation monitoring, decontamination, and the principles and practices of radiation protection commensurate with the proposed operation. Therefore, it appears the applicant has personnel with adequate training in radiation safety to assure the waste disposal operations will be conducted in such a manner as to protect health and minimize danger to life and property.

Equipment and procedures. The Military Sea Transportation Service will act as a carrier for the waste material from the dock to the sea disposal location. The waste will be packaged for sea disposal by AEC contractors and by government agencies and delivered to an MSTS vessel at a port. Radiation safety procedures have been established by MSTS covering each phase of the waste disposal operation. Adequate instrumentation will be available for measuring radiation levels from the containers and checking for radioactive contamination. The equipment and procedures appear adequate to assure the disposal operations will be conducted in compliance with the Commission's regulations and the conditions of the proposed license.

Containers and disposal sites. disposal containers to be used, and the disposal sites meet the recommendations of the National Committee on Radiation Protection contained in National Bureau of Standards Handbook 58, "Disposal of Radioactive Waste in the Ocean". MSTS will accept packaged waste only from AEC contractors and AEC licensees who are authorized by the Commission in their license to package waste for sea disposal. The waste

will be disposed of at the locations specified in Condition 7 of the proposed license. The minimum ocean depth at these locations is 1,000 fathoms and they are beyond the continental shelf. MSTS will maintain the necessary records to verify disposal at these

At least 20 days prior to each disposal the Commission will be notified of the proposed date for disposal, total number of containers, total activity of byproduct material in millicuries, total amount of source material in pounds, total amount of special nuclear material in grams and the most hazardous radioisotope in each container.

The disposal of low-level radioactive waste at sea where the depth is 1,000 fathoms when packaged in accordance with the terms and conditions of the proposed license is considered a safe method of radioactive waste disposal. The small amounts of radioactive waste licensed for sea disposal, even if released in sea water at the specified locations would be greatly diluted and dispersed by the ocean and would not result in concen trations of radioactivity of publc health significance.

[F.R. Doc. 59-6574; Filed, Aug. 10, 1959; 8:45 a.m.]

[Docket No. 50-146]

SAXTON NUCLEAR EXPERIMENTAL

Notice of Application for Construction Permit and Utilization Facility License

Please take notice that Saxton Nuclear Experimental Corporation, 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania, under section 104.b. of the Atomic Energy Act of 1954 has submitted an application for license authorizing construction and operation of a 20 megawatt (thermal) light water. pressurized, developmental nuclear reactor at a site near the Borough of Saxton, Pennsylvania. A copy of the application is available for public inspection in the AEC's Public Document Room, 1717 H Street NW., Washington,

Dated at Germantown, Md., this 4th day of August 1959.

For the Atomic Energy Commission.

R. L. KIRK, Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 59-6575; Filed, Aug. 10, 1959;

[Docket No. 50-128]

TEXAS AGRICULTURAL AND ME-CHANICAL COLLEGE SYSTEM

Notice of Issuance of Construction Permit

Please take notice that no request for a formal hearing having been filed following the filing of notice of the proposed action with the Federal Register Division on July 16, 1959, the Atomic Energy Commission has issued Construction Permit No. CPRR-38 authorizing The Texas Agricultural and Mechanical

College System to construct a 100 kilowatt open-pool type nuclear reactor on its site near College Station, Texas. Notice of the proposed action was published in the FEDERAL REGISTER on July 17, 1959, 24 F.R. 5744.

day of August 1959.

For the Atomic Energy Commission.

R. L. KIRK, Deputy Director, Division of Licensing and Regulation.

IF.R. Doc. 59-6576; Filed, Aug. 10, 1959; 8:45 a.m.]

FEDERAL COMMUNICATIONS **COMMISSION**

[Docket No. 11866; FCC 59-843]

ALLOCATION OF FREQUENCIES IN BANDS ABOVE 890 MC.

Report and Order

PRELIMINARY STATEMENT

- 1. The proceeding in this matter was instituted by the Commission's Preliminary Notice of Hearing released November 9, 1956. In such notice, the Commission pointed out, inter alia, That twelve years had elapsed since it had reviewed in detail the service allocations above 890 Mc., that the existing table of allocations for such frequencies was based primarily on a consideration of wartime developments in electronics, and that it was obvious that changes and developments had brought about a need to re-examine such service allocations. The notice provided that interested persons would be afforded an opportunity to participate in furnishing data with respect to 19 specified issues, as shown more fully hereinafter. Written comments were filed by a substantial number of parties and, subsequently, upon designating such matter for the presentation of oral testimony before the Commission en banc, a large number of witnesses appeared and presented oral testimony pursuant to several Notices of Hearing which scheduled the appearance of such witnesses on specified dates.
- 2. The oral hearings were held May 20, 21, 22, 27, 28; June 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26; July 1, 8, 9, 15, 16, 17, 22, 23, 29, 30, 31; September 30, and October 1, 1957. The record was held open until November 15, 1957, for the submission of several exhibits and the parties were given until December 15, 1957, to file briefs. In all, there were 30 days of oral hearing, over 200 persons and organizations filed comments, and over 160 persons appeared at the hearing and presented oral testimony. Five thousand and thirty pages of hearing record were accumulated, in addition to 166 exhibits. Briefs were also filed by several parties. Statements were filed by the United States Department of Justice and the Office of Defense Mobilization, now the Office of Civil and Defense Mobilization (OCDM).
- 3. In most cases, parties or organizations who filed statements also appeared

and presented oral testimony. A large number of letters or statements were filed by persons or organizations in support of the testimony or statement filed by a regional or national organization of which they were a member (for ex-Dated at Germantown, Md., this 4th every segment of the public which is now ample, police organizations). Virtually licensed to operate radio and television stations was represented in such proceeding. All the statements, testimony and briefs filed in this proceeding have been reviewed and carefully analyzed by the Commission. The statements and testimony are discussed and analyzed below under each of the 19 issues herein. In some cases, the data furnished by statements or testimony provided only generalized information. In particular, it is observed that, in many cases, specific data were not adduced as to the precise frequencies and spectrum space required for the proposed operation. Where specific data were adduced, it is so indicated.

4. At the time of the hearing in this matter, frequencies allocated for Operational Fixed operations in the bands 952-960, 1850-1990, 2110-2200, 2500-2700, 6575-6875, and 12,200-12,700 megacycles were available for assignment in the Safety and Special Radio Services on a developmental basis for a period of one year subject to renewal, except in the Aviation Services where authorizations were granted on a regular basis. Also, the band 890-940 Mc. was available for fixed operations and the bands 2450-2500. 10,550–10,700, 13,200–13,225, 16,000– 18,000 and 26,000–30,000 megacycles were available for fixed and mobile operations. The bands 3500-3700, 6425-6575. 11,700-12,200 megacycles were available for mobile operation. In two services. viz., the Special Industrial Radio Service and the Motor Carrier Radio Service, the rules provided for limited usage. Thus, § 16.253(a), governing the Motor Carrier Radio Service (which is essentially the same as § 11.503(b) governing the Special Industrial Radio Service) reads in part as follows:

Frequencies listed in this Section are available for assignment for fixed service operations in this service on a limited basis; however, extensive licensing of point-to-point sytems must await further development of the Commission's microwave program. Accordingly, requests for point-to-point facilities will be considered on a case-by-case basis. In general, request for such point-to-point facilities should clearly establish either (1) that a number of Fixed Stations at permanent locations are required to provide communications between iso-lated establishments or from such establishments to points at which established communication facilities are available, or (2) that the use of a remotely located Base Station, with which a requested fixed control and fixed relay link is proposed to be used, is necessary to maintain communications with mobile units for the conduct of authorized communications. Point-to-point facilities will not be authorized for the transmission of any type of signal or communication between two locations within the same Standard Metropolitan Area ex-

cept for the purpose of providing a fixed control and fixed relay link where the remote placement of a Base Station had been

Authorizations were and still are being made for point-to-point systems and for control and repeater stations in the several Safety and Special Radio Services.

5. Microwave frequencies allocated exclusively for common carrier fixed operations were in the bands 3700-4200, 5925-6425 and 10,700-11,700 megacycles. Additionally, the carriers were authorized to use, on a shared basis with noncommon carrier services, frequencies in the 890-940 Mc. band for fixed pointto-point operations. Also, on a shared basis with other services frequencies in the bands 2450-2500, 16,000-18,000, and 26,000-30,000 megacycles were available for fixed and mobile operations, and the bands 3500-3700, 6425-6575, and 11,700-12,200 megacycles were available for mobile use.1 The carriers also had access, jointly with operational fixed stations, to the bands 952-960, 1850-1990, 2110-2200, 2500-2700, 6575-6875 and 12,000-12,700 megacycles for international control stations. Virtually all common carrier operations using the above frequencies were authorized on a regular basis.

6. Microwave frequencies were allocated on a regular basis for Auxiliary Broadcast Services. Thus, the band 940-952 Mc. was allocated for STL (studio transmitter link) operations, audio only, and the bands 1990-2110, 6875-7050, and 12,700-13,200 megacycles were available to the broadcasters for TV pickup, STL, and intercity relay. In addition, the band 7050-7125 Mc. was available to common carriers to provide TV pickup and television STL service to television broadcasters. Also, frequencies in the bands 2450–2500, 16,000-18,000,2 and 26,000-30,000 megacycles were available on a case-by-case basis for TV pickup, STL, and intercity relay purposes.

7. The following changes in frequency allocations above 890 Mc. have been finalized by the Commission since the closing of the record in Docket 11,866 in November, 1957:

a. In its Memorandum Opinion and Order, In the Matter of Amendment of Parts 2, 4, 7, 8, 9, 10, 11, 12, 16, and 21 of the Commission's Rules and Regulations to reallocate certain frequency bands above 25 Mc., etc., adopted April 16, 1958 (Mimeo FCC 57-379), the following actions were taken:

(1) Reallocated the band 890-942 Mc. from non-Government to Government use in order to satisfy radiopositioning requirements. Under that Order, it was provided that no new fixed stations, including tropospheric scatter stations in the international fixed service, would be authorized in the band 890-942 Mc.; and that all stations authorized to operate on frequencies in the band 890-942 Mc. may continue to operate pursuant to the provisions of their existing authorizations.

¹ Use of the frequencies in the bands 890-940, 2450-2500, 17,850-18,000 megacycles was subject to no protection from interference due to the operation of industrial, scientific, and medical devices on the frequencies.

²Subject to no protection from interference from ISM operations on such frequencies.

It was further provided that renewal of authorizations for such stations would be issued only on the condition that they accept any harmful interference that may be experienced from either ISM equipment in the band 890-940 magacycles or from the radiopositioning service in the band 890-942 megacycles, and that they do not cause harmful interference to the radiopositioning service.

(2) Reallocated the band 1215-1300 megacycles from Amateur to Government and non-Government. Amateurs are permitted to operate in this band, however, subject to the condition that they shall not cause interference to the radiopositioning service.

- (3) Reallocated the frequency bands 1350-1400, 3100-3500, 5100-5250, 8500-9000, 9500-9800 megacycles from their present shared status between Government and non-Government use to exclusive Government use. It was provided that no new land or mobile radiopositioning stations would be authorized in the bands 3100-3246, 3266-3300, and 9200-9300 megacycles and that no new radionavigation stations would be authorized to operate shipborne radars in the band 3100-3246 megacycles. It was further provided that all such stations now authorized to operate on frequencies in those bands may continue to operate pursuant to the provisions of their existing authorizations until the termination of such authorizations: and that renewal of authorizations for such stations would be issued only on the condition that they cause no harmful interference to Government services in these bands.
- (4) Reallocated the bands 2300-2450 and 5650-5925 megacycles from Amateur to Government and non-Government. The only non-Government service permitted is the Amateur service, subject to the condition that it shall not cause harmful interference to the radiopositioning service.
- (5) Permitted Government radiopositioning service in the band 2450-2500 megacycles on the condition that harmful interference is not caused to non-Government services.
- (6) Reallocated the frequency band 3500-3700 Mc. from non-Government to Government and Amateur use. The Government use is primarily for radiopositioning, and the non-Government use is Amateur exclusively. Persons presently authorized to operate on frequencies in the band 3500-3700 Mc may continue to operate until the expiration of their present authorizations, and if existing authorizations expire prior to February 1, 1961, applications for renewal may be granted for authority to operate until that date.
- (7) Reallocated the band 8400-8500 Mc. from Government to non-Government, fixed and mobile.
- (8) Reallocated the band 10,000-10,500 Mc. from Amateur to Government/non-Government. This band is limited to CW systems. The Amateur service, which shall not cause harmful interference to the radiopositioning service, is the only non-Government service permitted in this band.

- (9) Reallocated the band 13,225-13,250 Mc. from Government to non-Government, fixed and mobile.
- b. In its First Report and Order in Docket No. 12404, released July 31, 1958 (Mimeo FCC 58-750), effective September 2, 1958, the Commission reallocated the band 13,250-13,400 Mc. from Government to Government/non-Government for the aeronautical radionavigation service for airborne doppler radar use.
- c. In its Third Report and Order in Dockets Nos. 12404 and 11866, released September 11, 1958 (Mimeo FCC 58-869) effective October 15, 1958, the Commission reallocated the band 1435-1535 Mc. from the Aeronautical Radionavigation (G & NG shared) to Aeronautical Mobile for Flight Test Telemetering (G & NG shared).
- d. In its Report and Order in Docket No. 12671, released February 4, 1959 (Mimeo FCC 59-77), the Commission amended its rules to permit stations in the International Fixed Public Radiocommunication Service to use the frequencies 2110-2200 Mc. in the State of Florida south of 25 degrees 30 minutes north latitude.
- e. In its Fourth Report and Order in Docket 12404, released November 14, 1958 (Mimeo FCC 58-1079), effective December 29, 1958, the Commission amended its rules to permit educational institutions to use frequencies in the bands 2900-3100, 5250-5440, 5460-5650, 9000-9200, and 9320-9500 megacycles for radiopositioning operations, subject to the condition that harmful interference will not be caused to the radionavigation service.
- f. In its Fifth Report and Order in Docket 12404, released February 20, 1959, effective March 31, 1959 (Mimeo FCC 59-141), the Commission amended its rules to permit sharing between common carriers and private users under certain circumstances in the frequency bands 942-952 and 2110-2200 megacy-
- g. By Report and Order in Docket 12852, released June 12, 1959, effective July 10, 1959 (Mimeo FCC 59-559), the Commission amended Part 2 of its Rules and Regulations to provide for the assignment of frequencies in the 952-960 Mc. band to stations in the International Fixed Public Radiocommunication Service in Puerto Rico and the Virgin Islands.
- 8. While not involving specific frequency assignments, the Commission, in a Report and Order in Docket No. 11745, released November 24, 1958 (Mimeo FCC 58-1111), amended its rules to provide that any applicant seeking a new or modified radio station authorization, where such station is located within a specified proximity of Greenbank, West Virginia, shall simultaneously notify, in writing, the Director, National Radio Astronomy Laboratory, of the technical particulars of the proposed station. Such notification is necessary in order to minimize harmful interference at the National Radio Astronomy Observatory site at Greenbank, Pocahontas County, West Virginia and the Naval Radio Re-

- search Observatory at Sugar Grove, Pendleton County, West Virginia. The amended rules also provided that, after receipt of such applications, the Commission will allow a period of twenty days for comment or objections in response to the notifications indicated. The following classes of stations have been excluded from such coordination procedures: Amateur, Citizens, Mobile, Civil Air Partol, Temporary base, Temporary Fixed.
- 9. Simultaneously with the release of the Memorandum Opinion and Order noted above in paragraph 7(a), the Commission released a Notice of Proposed Rule Making in Docket No. 12404 (Mimeo FCC 58-378). As previously indicated, this notice formed the basis for the finalization of several of the rule changes shown above. In addition, however, there are still pending under that Notice several other proposed changes in the allocation of frequencies above 890 Mc. Because of the extent of such proposed changes, they will not be reported here.

EVIDENCE PRESENTED

10. The statements and testimony presented by the various persons and organizations are summarized below under the particular Issue involved. In view of the substantial number of persons and organizations who testified and the voluminous testimony presented, it is not practicable to detail the testimony of every party who filed a statement or presented oral testimony. The summaries herein cover the major aspects of the evidence presented. However, as indicated above, all the statements filed and oral evidence adduced have been carefully analyzed and considered.

Issue No. 1. "What are the present and future demands for frequencies above 890 Mc. for point-to-point radio communication systems, both common

carrier and private?

(a) How were these demands satisfied previously, i.e., private wire, use of private radio other than microwave, common carrier wire or radio facilities?

- (b) What benefits accrue to the user and the general public from the use of microwave frequencies for private pointto-point radio systems as compared with other means of communications and the specific nature, extent and magnitude of such benefits?
- 11. Under this issue, in particular, the record shows that there was much generalization by many of the parties as to frequencies and spectrum space needed for future operations. Similarly, many of those who testified or filed statements did not indicate whether and to what extent microwave is now being utilized for point-to-point operations, or whether communication service is now obtained from common carriers by means of wireline, cable or radio, or a combination thereof, or whether the organization has its own wireline communications system. In some cases microwave is being proposed for new purposes where communications facilities previously have not been utilized.

PRESENT AND FUTURE DEMANDS FOR FREQUENCIES

12. The first part of Issue No. 1 relates to the present and future demands for frequencies above 890 Mc. Turning first to the common carriers, the record shows that, at the time of the hearing, the Bell System telephone companies had, in the Point-to-Point Microwave Radio Service, about 10.5 million miles (22 percent) long distance telephone circuit mileage on microwave and about 60,000 miles (78 percent) of its intercity television circuit mileage on microwave.3 It was estimated that, by 1967, the Bell System intercity telephone circuit miles on Microwave would amount to about 70 million circuit miles, or about 55 percent of its total intercity telephone circuit Bell System microwave systems using frequencies above 890 Mc. span the continent and extend into every state. Virtually all such operations are authorized on a regular basis. Nearly all microwave bands allocated for common carrier operations are now being used by the Bell System to some extent, except that little or no use has been made of the bands above 13,000 Mc., which are available on a shared basis The 3700with other radio services. 4200 Mc. band is used by the Bell System for long-haul, heavy traffic routesthe backbone of its telephone and television routes. It was claimed that this band is virtually saturated in five major cities (New York, Chicago, Los Angeles, Washington and Atlanta). However, it was admitted that there were no cities at that time where additional use of these frequencies could not be made. Some operations are being conducted in the 890-940 Mc. band, in some cases for over-water hops. Substantial use is being made of the 5925-6425 Mc. band for long-haul, heavy traffic routes and it was claimed that such band would be used to capacity in 10 or 15 years. A Bell System witness stated, however, that he believed that the maximum number of radio channels which could be operated along a given route could be increased by improvements in antennas, and that, when the time comes that the spectrum really becomes crowded, they will likely look toward further improving the antennas. Bell System has re-cently developed what is called a TH microwave system for operation in the 5925-6425 Mc. band. Quantity production of such system was expected to be underway in 1959, and it was believed that the development of such system would constitute a major step forward in securing greater frequency utilization. A little use is being made of the 11,000 Mc. band by the Bell System which has recently developed a system suitable for short-haul systems in this band. Such system is well adapted for dropping and adding channels at intermediate radio relay stations in the microwave system. It was conceded that frequencies in the 11,000 Mc. band could be used to provide terminations in congested areas. In difficult cases, such as long overwater hops (i.e., Florida to Cuba) Bell uses tropospheric scatter but otherwise has no plans for its use between points in the continental United States. It was claimed that there would be greatly expanded use of radio in the future due to growing practicability of radio for shorter systems and widespread increase in the use of visual communication. It is expected that there will be a large use of radio for both long-haul and shorthaul purposes for both heavy and light traffic routes. Moreover, it was expected that there would develop a substantial use of frequencies above 30,000 Mc. for very short hops using very highly directive antennas and possibly involving very small repeater stations which are very easy to move. The American Telephone and Telegraph Company had in use about 6,000 units of Western Electric Equipment in its fixed microwave operations and a total of 1,020 units (transmitter-receiver combination) of other manufacturers. The Bell System advo-cated allocating the band 6425-6575 Mc. to common carrier fixed and mobile service so as to permit transfer thereto of many short-haul television fixed services from the 3700-4200 Mc. and 5925-6425 Mc. bands, thereby freeing the latter bands for long-haul intercity service. Under mobile station authorizations for more than 250 units operating in the 6425-6575 Mc. band in the Local Television Transmission Service, Bell has provided closed loop television service to theatres and hospitals as well as for other special local non-broadcast television requirements. Although this band allocation is shared between common carriers and private users, the Commission's records show that, other than telephone companies, there are few licensees authorized therein. It was claimed that the demand for common carrier closed loop television service is increasing. Bell recommended that 'the band 6425-6575 Mc., which is now allocated to "Mobile except TV-Pickup," be reallocated to common carrier fixed and mobile services for all types of local television service provided by the common carriers. It was stated that the demand for local television facilities from the broadcast industry has been so great that the telephone companies have found it necessary to make considerable use of the common carrier fixed bands, 3700-4200 Mc. and 5925-6425 Mc., to supplement the three common carrier TV-Pickup channels available in the 7000 Mc. range. Further, they stated that this need is most predominant in the large metropolitan areas where there is an extensive and growing use of common carrier fixed bands for long-haul service. At the time of the hearing the Bell System had nearly 600 short-haul television systems in use, of which 425 were portable equipments. In order to provide for the large expansion of short-haul intercity facilities which they claimed was developing, and to help in meeting the requirements for local non-broadcast and local broadcast TV facilities, the Bell System recommended expansion of the 10,700-11,700 Mc. common carrier fixed band to 10,550-12,200 Mc, common car-

rier fixed and mobile services. Bell expects ultimately to develop this band for long-haul service (4000 miles or more) which then may require transfer of some short-haul operations to higher bands. Aside from 7050-7125 Mc. band, wherein telephone companies render broadcast TV-Pickup and STL service extensively, they also are using the 12,700-13,200 Mc. band, which is available for common carrier use only with the concurrence of the broadcasters. Because they claim that this arrangement did not provide adequate flexibility. Bell urged the Commission to restore to common carrier use, exclusively, for TV-Pickup and TV-STL, the band 12,700-12,875 Mc., which was thus allocated prior to the Commission's Report' and Order in Docket No. 10345 of Au-

gust 4; 1954.

13. The independent telephone companies use frequencies in the 900, 4,000 and 6,000 Mc. bands for their operations in the Point-to-Point Microwave Radio Service. It was estimated that such bands would be saturated by 1972 and that additional frequencies would be required. They strongly urged that the band 890-940 Mc. be allocated exclusively to the common carriers and were in agreement with the Bell System companies for the allocation of other frequency bands to common carriers, as described more fully below, in order to meet increasing demands. It was claimed that the band 890-940 Mc. is best suited for short-haul, light route use, and particularly for over-water-hops; the band 3,700-4,200 Mc. now used extensively for long-haul, heavy industry traffic routes is overcrowded and should be expanded to encompass 3,500-4,200 Mc.; the frequencies now allocated in the 6,000 Mc. band used for short-haul, low capacity circuits appear to be inadequate for future demands; and that it is difficult to evaluate the utility of the 11,000 Mc. band, but that the most probable use will be for large groups of shorthaul circuits. A study made by Penninsular Telephone Company, represented as one of the independent telephone companies exhibiting a faster than average growth, showed that, in 1956, cable circuits used by such company provided about 70 percent of its total requirements with microwave radio accounting for about 18 percent. It was estimated that. by 1972, open wire facilities would be negligible and about 62 percent of the total message and special service circuit requirements for such company will be provided by radio facilities. An estimate was not given as to the average requirements for microwave by independent telephone companies as a group. Nor were specific data obtained as to how much spectrum space would be required in the various bands for the independent telephone companies as a group.

14. Western Union uses microwave for its telegraph operations in the Point-to-Point Microwave Radio Service. At the time of the hearing, it was licensed to operate a microwave radio system, using frequencies in the 4000 Mc. band, between New York City, Pittsburgh, and Washington, D.C. Such system used 974 channels, of which 625 (64 percent) were in leased line service and 250 (26

³ As of March 31, 1958, Bell System had about 11.8 million miles long distance telephone circuit mileage on microwave, and, at the end of May 1958, had about 64,400 miles of its intercity television circuit mileage on microwave.

percent) were in public message service. At that time, there was under construction a link extending its system westward from Pittsburgh to Chicago, via Columbus, Cincinnati, Indianapolis, and Enos, Indiana. According to the Company, this link has now been completed and is in operation providing a total of 882 channels. The construction of extensions from Indianapolis to Kansas City, via St. Louis and from Enos to Toledo, Detroit, and Cleveland were character-"imminent." Further, ized as being Western Union indicated that it has plans to construct a comprehensive nationwide microwave system connecting nearly all the major cities in the United States.

15. RCA Communications, Inc. (RCAC) filed a statement indicating that it now makes use of microwave frequencies for the operation of a microwave relay for international control circuits between its central radio office in New York City and its Long Island station, utilizing frequencies in the 1800-1900 Mc. band. It was urged that these frequencies should be retained for such service.

16. Press Wireless, Inc. also filed a statement in which it stated that since 1953 it has utilized a microwave circuit from time to time experimentally between its receiving stations at Baldwin and its transmitting stations at Hicksville, Long Island, New York, when wirelines are disrupted or overloaded. The company claims it needs "adequate" frequency assignments in the microwave band to meet its specialized function of serving the needs of the press and other media of public information dissemination.

17. The National Mobile Radio System (NMRS), an association of licensees (the so-called Miscellaneous Common Carriers) in the Domestic Public Radio Services, claimed that they need microwave frequencies in the 890-940 Mc. band for control-repeater operations because they must vacate the 450-460 Mc. band which they are now using for such operations. Further, they claimed that wirelines are too costly and often not available and that use of the 72-76 Mc. band is not practicable because of possible interference to television operations.

18. The Common Carriers (excluding NMRS) were in substantial agreement in reference to proposed frequency allocations. Their requests may be summarized as follows:

a. The entire band 890-940 Mc. should be allocated to common carrier fixed

service.

b. Combine the 3500-3700 Mc. band with the 3700-4200 Mc. band and allocate the entire new band 3500-4200 Mc. to common carrier fixed operations. Western Union advocates using the 3500-3700 Mc. band for forward scatter systems within continental United States but retaining 3700-4200 Mc. for common carrier fixed operations.

c. Combine 6425-6575 Mc. band with 5925-6425 Mc. band and allocate the entire new band 5925-6575 Mc. to common carrier fixed with that portion 6425-6575 allocated to fixed and mobile so as to accommodate local television service provided by the common carriers. RCAC recommended the use of all operational fixed and common carrier fixed bands between 952 Mc. and 6575 Mc. for tropospheric scatter systems on a shared basis.

d. Retain the present allocation 7050-7125 Mc. for common carrier TV pickup and STL.

e. Retain the band 10,700-11,700 Mc. for common carried fixed but add to it the bands 10,550-10,700 Mc. and 11,700-12.200 Mc. and allocate the entire new band 10,550-12,200 Mc. to common carrier fixed and mobile.

f. Allocate the band 12,700-12,875 Mc. exclusively for common carrier broadcast and non-broadcast TV pickup and STL which would provide a new band 12,700-13,200 Mc. for this purpose. The band 12,875-13,200 Mc. was previously set aside exclusively for common carrier broadcast TV Pickup and TV-STL.

g. Allocate the bands 16,000-17,850 Mc. and 26,000-30,000 Mc. for common carrier fixed exclusively.

h. No restrictions on use of frequencies above 30,000 Mc.

19. With respect to private microwave authorizations are systems. being granted for point-to-point systems using microwave frequencies in the Public Safety (includes Police, Fire, Forestry Conservation, and Highway Maintenance Radio Services), Power, Forest Products, Petroleum, Railroad, and Special Industrial Radio Services. Microwave links for control and repeater stations are authorized, in addition to the above, in the Special Emergency, Motor Carrier, Aeronautical and Marine Radio Services.

20. The testimony of the various proposed users of private microwave systems concerning the present and future demands for frequencies are summarized below by user group or organization.

21. Operational Fixed Microwave Council. This organization, which is comprised of persons, other than common carriers and broadcasters, eligible to use operational fixed radio stations, serves, in part, as an unofficial coordinating agency in the use of microwave frequencies for operational fixed operations. It provides only an advisory service and, as such, made no specific request for frequencies. The Council assembles data on microwave systems and furnishes prospective users of such facilities with information on existing or proposed installations in any given area. Frequency assignments are plotted on maps by the Council and after a member thereof has made his initial determination as to frequency requirements it is submitted voluntarily to the Council. Such data are plotted in pencil on a map of "Proposed" stations. Sub-sequently, after licensing by this Commission, the data are transferred to a "Permanent" station map. Thus, theoretically, the two sets of maps will show all the present and proposed use of frequencies for operational fixed microwave systems. According to its records, there were a total of 253 users and proposed users in the 960, 2000 and 6000 Mc. bands with an aggregate of 3,012 transmitter beams. The normal mileage of a beam was estimated to be 35 miles.

22. National Committee for Utilities Radio (NCUR). The NCUR appeared as spokesman for the nation's electric,

gas, water and steam utilities. It was stated that such utilities are authoried to operate 513 microwave stations and have nearly 14,000 system route miles or a total of about 69,000 channel miles in use. These systems are used for voice, telemetering, supervisory control, facsimile, teletype, etc. Based upon a survey, it was estimated that there would be over 150 future NCUR applicants for microwave frequencies utilizing, by 1970, 1,160 stations comprising about 26,000 system route miles. The principal usage of such facilities would be for voice telephone, teletype, telemetering, relaying, closed circuit TV, facsimile, data processing, alarm signalling and remote production control. All available types of communication media are now being used by this group of licensees. It was testified that future operations would require a combination of common carrier and private operations, wire and radio, mobile and point-to-point. It was claimed that the 1850-1990 Mc. band is not sufficient for expected future opera-

23. Special Industrial Radio Services. Testimony for this group was presented by the Special Industrial Radio Service Association (SIRSA), a national nonprofit organization of licensees who use mobile radio in connection with their industrial or business activities, including agriculture, heavy construction, building construction, manufacturing, mining, specialized industrial and trade services, engineering services, and miscellaneous public services. Of this group, only Freeport Sulphur Company, which is located in an area where wireline communication facilities are not available, uses microwave for point-topoint operations. It connects its isolated mining operations and its offices in New Orleans, Louisiana. Specific data were not presented as to the extent of future needs and demands for microwave for the group as a whole, but the general position was taken that eligibility should be expanded to provide for the use of microwave to persons eligible in the Special Industrial Radio Service for such functions as integrated data processing, telemetering, facsimile, closed circuit television transmission, plant protection and security, agricultural commodity quality and production control, automation, etc. Specific evidence was presented by Minute Maid Corporation as to their proposed use of microwave for an integrated point-to-point and mobile system for use in connection with its business operations in Central Florida. Halliburton Oil Well Cementing Company also presented evidence as to its needs for microwave radio for point-topoint communications in connection with its operations.

24. Petroleum Radio Service. The bulk of evidence adduced for the petroleum group was presented by the Central Committee on Radio Facilities of the American Petroleum Institute. Comments in support thereof were received from more than 50 organizations in this field. It was reported that microwave users in this service have over 17.000 "beam miles" and over 152,000 channel miles in operation. These operations are principally along their pipelines and

cilities are not available. It was predicted that, within ten years, the total "beam miles" will be from 4.5 to 6.5 times as great as at present; that voice channel miles will increase at the same rate; and that telemetry and remote control operations will expand even more rapidly. In the case of offshore oil drilling operations, it was pointed out that radio is the only means available to meet their communications require-

25. Railroads. Five railroads were using microwave along their rights-ofway for point-to-point communications in connection with their railroad operations. Two of these railroads proposed to expand their microwave radio systems in the near future, thirteen expected to have microwave systems in operation within the next few years, and seventeen other railroads indicated that they foresee the need for microwave as a part of the expansion or modernization of their communications systems. A witness stated that approximately 16 systems would terminate in Chicago within an area of about a mile square. railroads argued that it is essential that it furnish its own communications for the most part rather than depend entirely upon communications common carriers because common carriers are not able to provide the specialized kinds of communications which railroad operations require. Microwave will be used by railroads in the future for data processing; control of safety, reliability and economy of operation, coordination of traffic movements; freight car distribution, accounting procedures, including a system-wide data gathering process, etc. It was estimated that a maximum of 36 channels (assignable frequencies) will be required for the railroads' needs. They urge the allocation of frequencies below 10,000 Mc. for long-haul operations and above 10,000 Mc. for terminal operations in congested areas.

26. American Trucking Associations. The testimony presented by this organization centered primarily around the operations of Central Freight Lines, Inc. whose applications for a private pointto-point microwave system for operation between Dallas and Fort Worth, Texas, were then pending in the Commission.4 No authorizations for private point-to-point microwave systems have been granted to motor carriers to date. Communications facilities employed by such motor carriers for point-to-point services are now obtained from communications common carriers. It was testified that there would probably not be more than 20 to 24 carriers between any two points in Texas that would want point-to-point communications on microwave. The Association claimed that its lack of microwave operational experience made it impossible to predict with any degree of certainty the extent of utilization and demand of microwave by the trucking industry. However, it was indicated that a 24-channel system would be required, and that cooperative-

⁴These applications were subsequently designated for hearing in Docket No. 12570.

generally cover areas where wireline fa- sharing arrangements within the industry would be feasible and desirable. Further, the Association indicated that the following microwave networks might be placed in operation by the motor carrier industry during the next five to ten years:

a. A transcontinental microwave system from Boston, Massachusetts, to San Francisco, California.

b. A system from Boston running south along the Atlantic coast States and west into Texas.

c. A system running south from Chicago, Illinois, to New Orleans, Louisiana.

27. National Association of Manufacturers. The testimony presented related to the country's heavy industries, such as the automobile, air frame manufacturers, the chemical industry, the steel industry and certain others. It was testified that manufacturers are not now using frequencies above 890 Mc. for point-to-point communications. companies expect to use microwave for point-to-point communications tems, for operational and administrative needs between a series of manufacturing units located within relatively short distances. However, intercity systems might be required in some cases. No specific frequency need or demand was shown, but it was proposed that the Commission allocate specific frequency bands to the group with the proviso that allocations be made out of the first 50 percent of such allocated band and the remaining 50 percent be held in reserve for a period of, say, five years. The frequencies so reserved would be assigned only upon a showing of need therefor. This proposal, it was claimed, would obviate spectrum waste because, if such frequencies were not used by the end of such specified period, other groups could request them for other purposes.

28. American Association of State Highway Officials. Thirteen different frequencies above 890 Mc. have been used by highway departments, predominately for control and repeater operations. Twelve exclusive frequencies (probably 24 channels each) in the 890-960 Mc. band were requested. In addition, it was requested that a frequency for operating traffic speed meters be allocated on a regular basis.

29. American Bridge, Tunnel and Turnpike Association. Microwave was being used by the Pennsylvania, New Jersey, Ohio, Indiana, Florida, Maine and Massachusetts turnpikes. It was indicated that six channels of 10 Mc. bandwidth each would be required for turnpike usage alone and that the 41,000 miles of proposed interstate and defense highways would develop a need for microwave radio systems. Microwave would be used mostly for highway patrol and maintenance work, but it was expected that there may be some need for television purposes.

30. Aeronautical Radio, Inc. and Air Transport Association of America. Frequencies above 890 Mc. are used to some extent by these parties, but their needs are now met mostly by the telephone and telegraph facilities of common carriers. They were principally concerned with the needs of radionavigation

and communications useful or necessary for aircraft operations. They are using microwave frequencies for control-relay type of operations, but expected that future operations will also include centralized reservations and operational functions and data processing. coast-to-coast microwave networks connecting New York and San Francisco were envisioned, one via Chicago and the other a southerly route via Chattanooga, Albuquerque, and Los Angeles. Branches from these systems would connect with other important cities. It is not clear from the record, however, as to whether these systems would be provided by the carriers or by the aviation interests. One witness stated that the aviation people must have a choice as to whether they will provide the service. It was indicated that their need for communication facilities in 1966 will be almost double the 1960 requirements. A need for additional channels in the 960-1215 Mc. band for Tactical Air Navigational (TACAN) operations was indicated. It was stated that about 200 Mc. would be needed and could be taken from the lower end of the 1365-1660 Mc. band. Also, clarification of the Commission's Rules was requested to make this latter band available to civil aviation equally with the military for altimetry purposes. A possible future need was indicated for 100 Mc. in the 3266-3300 Mc. band for Proximity Warning Indicator and Collision Avoidance System (PWI/CAS). It was recommended that civil aviation should continue to have access to the 4200-4400 Mc. band for use of special purpose altimeters, if and when required. Another possible requirement was expressed for 150 Mc. in the vicinity of 4500 Mc, for PWI/CAS, but this spectrum space might be taken from the 5000-5250 Mc. band. It was recommended that 200 Mc. be made available in the vicinity of 8800 Mc. for selfcontained navigational aids. Doppler Radar may require exclusive frequencies if accepted for general use in civil aviation. Also, 300 Mc. space in the 8800 Mc. band for PWI/CAS may be required. The allocation of two bands of frequencies each 250 Mc. wide in the range 12,500-14,500 Mc. and another band also 250 Mc. wide between 15,000-16,000 Mc. was recommended for Aeronautical Radionavigation. The allocation of spectrum space between 23,500-24,500 Mc. was recommended for Radionavigation to accommodate such devices as Airport Surface Detection Equipment. allocation should be coordinated with FAA and the band designated Government/non-Government. The Air Transport Industry recommends retention of all frequency bands now allocated to the Operational Fixed Service.

31. Aeronautical Flight Test Radio Coordinating Council. This organization urged that there be allocated 200 Mc. spectrum space for telemetry for flight testing of aircraft, 100 Mc. of which should be in the 1365-1660 Mc. band. They also urged that the band 2200-2300 Mc. should be made available for non-Government, as well as Government flight telemetry. It was claimed that these frequencies are essential for airground operations in connection with flight testing. In addition, it was testified that frequencies are needed for a system which would be used for relaying information from the test site to the data processing center for analysis and sending the results back to the observers at the test site.

32. International Municipal Signal Association, International Association of Fire Chiefs and American Municipal Association. Witnesses from these organizations testified on behalf of the municipal organizations in this country. Generally, such testimony did not relate to police usage although one witness suggested that it might be advisable to have an integrated municipal communications system for all municipal operations. It was estimated, on the basis of a survey in fifteen cities that, for each one million population, municipal governments will require 15 microwave networks, 39 microwave spans (repeater locations), 62 two-way voice circuits, 55 microwave telegraph circuits, and 22 oneway TV circuits. The total path mileage would be 297. Twelve megacycles bandwidth would be required for such operations using frequencies below 10,000 Mc., but 20 Mc. bandwidth would be required for operation above 10,000 Mc. Opposition was voiced to limiting intracity and intracounty systems to frequencies above 10,000 Mc.

33. One witness urged that provision should be made for omnidirectional transmission in connection with Fire Service operations. The proposed communication system would be composed of a 100-watt omnidirectional transmitter located at a central station and emitting a continuous carrier on a frequency in the 960 Mc. band. It was claimed that 90 multiplexed tones could be transmitted in a bandwidth of 100 kc. These tones would be received by outlying fire stations and would be used for sounding alarms and dispatching fire fighting equipment. In addition, two frequencies in the 1900 Mc. band, each 300 kc. wide, would be required for voice communication from the central station to the outlying stations. These two frequencies would use 30° beam width. Another omnidirectional system in the 1900 Mc. band would be used for television, facsimile and teletype and would require 4 Mc. band width. Four additional frequencies in the 2700 Mc. band, each requiring 300 kc. bandwidth, would be required to relay communications from the outlying stations back to the central station. In this connection, the City of Los Angeles, California, is now authorized on a developmental basis in the Fire Service to operate an omnidirectional system in Los Angeles using the frequency 959.88 Mc. Also, the District of Columbia is authorized to use the frequency 952.5 Mc. for its omnidirectional antenna system for traffic light control purposes.

34. Forestry Group. Only one private microwave system for point-to-point communications, covering about 100 miles, has been licensed (viz., A. J. Hodges Industries, Inc. in the State of Louisiana), although microwave is used by the forestry group for control-repeater links for VHF base station control and telemetering. Apart from these, communications facilities for point-topoint operations have been obtained from common carriers, although it was alleged that, in the forestry areas, such facilities are generally inadequate since most of the operations are conducted in areas remote from existing communications systems. It was stated there is a need for microwave for surveillance TV, for use in connection with pest control and other protection activities, for data processing, production control and other operational and administrative purposes.

35. American Waterways Operators, Inc. No microwave systems are in operation by this organization, but a statement was filed requesting frequencies above 890 Mc. to take care of any future needs that may develop. Beyond this, no specific data were furnished.

36. National Retail Dry Goods Association. At the present time these organizations obtain their communications facilities from the communications common carriers. They stated that they desired microwave systems which would be used to connect their stores and warehouses for checking credit authorizations, maintaining inventory control and other business and operational purposes.

37. Police. Evidence was presented for this group by the International Associations of Chiefs of Police and the Associated Police Communications Officers. Inc. Statements in support thereof were filed by a substantial number of State and municipal police organizations. The witnesses pointed out that many public safety communications systems operated by states, counties, and cities are now using microwave equipment, and claimed that the amount of equipment in use and the emphasis placed on these systems will continue to be increasingly important. They took the position that frequencies above 890 Mc. were plentiful for the foreseeable future. They claimed that a bandwidth of 50 kc. is adequate for their operations in the 952-960 Mc. band; 4 Mc. is adequate for operations in the bands 1800, 2500 and 3500 mega-cycles and that 6 Mc. is adequate for operations in the 6575-6875 Mc. band.

38. American Newspaper Publishers' Association. A survey of the newspaper industry indicated that 221 out of 794 members of this association were interested in the use of microwave. Other than such survey, virtually nothing was presented to support the claimed need for microwave frequencies and no data were furnished as to frequency space required.

39. Associated Universities, Inc. (AUI) and National Science Foundation. Evidence was presented as to the need for the frequency 1420 Mc. for radio astronomy operations. In order that electrical interference may be kept at an absolute minimum for such operations, the following measures were requested:

a. That the frequency range 1400-1427 Mc. cleared from all transmission. It was claimed that this step protects the observation of the hydrogen line in emismison and absorption for sources within our own galaxy.

b. That all applications for radio station operations (except mobile operations) within 50 miles of Greenbank. West Virginia (where an observatory is being constructed) be flagged, and that applicants be required to consult with scientists designated by AUI on interference problems which would be worked out on a case-by-case basis.

c. That, when possible, TV channels 14, 53, and 54 be exchanged with other UHF TV channels so that, as far as possible, no TV transmitter would operate on channels 14, 53, and 54 within 150 miles of Greenbank.

d. That any TV stations on channels 14, 53, and 54 which remain within 150 miles of Greenbank be required to attenuate their harmonics to 80 db below carrier level.

40. Collins Radio Company. This company presented evidence on systems utilizing tropospheric scatter propagation. It was claimed that such systems of 200 miles or more are practical at the present time and that such systems in the foreseeable future will become competitive with the cost of conventional line-of-sight systems. It was claimed that frequencies in the range 600 to 1000 megacycles appear to be well-suited for such use, although usable tropospheric scatter circuits can be obtained at 2000 Mc. and higher. It was further claimed that scatter systems and conventional line-of-sight systems can occupy the same frequency band to advantage. This was contrary to the testimony given by virtually all the other parties herein who testified that generally such joint occupancy was not feasible or desirable.

41. Industrial, Scientific and Medical Services. Evidence as to the need and demand for microwave frequencies for ISM operations was presented by General Electric Company, Society of the Plastics Industry, Inc., American Motors Corporation, Tappan Stove Company, American Medical Association, Raytheon Manufacturing Company, Mississippi Products, Inc. and the American Institute of Electrical Engineers (AIEE). In general, all claimed that there was a need for continuation of the existing allocations for ISM operations even though certain allocated frequencies were not then being used for such operations. The testimony of these parties is discussed more fully un-

der Issue No. 12 herein.

42. Westinghouse Electric Company. Evidence was presented by this organization as a manufacturer and a potential user of microwave. Communications service is now obtained from common carriers. It claimed that its teletype requirements increased tenfold between 1940 and 1956 and that the need for communication with its 2500 dealers is expanding rapidly. Further, it was indicated that microwave is needed for data processing, high speed facsimile and broad band television.

43. National Community Television Association, Inc. This organization, representing a substantial number of community antenna television operators, urged the allocation of microwave frequencies for such operations in order to bring television into areas where TV

most cases such service is now being provided by cable or open wire transmission lines. It contended that frequencies in the bands 1990-2110 and 6875-7125 megacycles are suited for this purpose and are unused in the areas in which community antennas would be installed. In most cases there is need only for one hop to relay the signals from the antenna to the distribution system, but occasionally two or more hops would be

44. Radio and Television Broadcasters. In addition to the National Association of Broadcasters, evidence was presented by several television station licensees. In general, it was urged that microwave should be made available to television licensees to bring television into areas not now being served. These organizations recommended the allocation of an exclusive band from 940 to 952 megacycles for aural STL transmissions for AM, FM and TV stations. It was stated the 2000 Mc. band offers advantages which make it particularly desirable for intercity and STL use; and that transmission on frequencies above 6000 Mc. is susceptible to absorption and scattering due to rain particles. It was urged that three channels in the 7050-7125 Mc. band which have been allocated to common carriers to-serve certain broadcast purposes should be available for use by individual broadcasters, and the bands 1990-2110, 6875-7050 and 12,700-13,200 megacycles should be maintained as exclusive broadcast allocations. It was stated that they would be willing to forego sharing privileges in the 2450-2500 and 12,700-13,200 megacycle bands. 45. Educational Television. Oral tes-

timony was given by the Joint Council on Educational Television and the Southern Regional Education Board. These parties stated that there is a need for continued allocation of frequencies for studio-transmitter links and TV pickup stations for educational television stations and that such stations should be permitted to establish their own intercity microwave links connecting their stations. Several plans looking toward state-wide educational television networks have been considered. A statewide educational television broadcasting network is now in operation in Alabama and an educational television network now serves the Hagerstown, Maryland area. Plans are being made to extend such television network system substantially. The State of Florida has appropriated \$500,000 for the establishment of an educational television network in that State. A number of universities and institutions of learning throughout the country now have educational television facilities in operation. To date, common carrier facilities are used for such networks. It was indicated that three or four channels would be sufficient for such network operations where not many programs were duplicated. Frequencies in the range 10,000 to 13,000 megacycles would be satisfactory for shorthaul circuits, but frequencies in the 2000 and 7000 megacycle bands would be preferable because they can be used for If one out of five stations is located in not of the right-of-way type.

service is not now being provided. In mobile pick-ups at greater distances as well as for intra-campus operations. The Southern Regional Education Board, which is composed of members from each of 16 specified States, mostly in the South, stated that consideration has been given to the possibility of installing a multi-channel microwave facilities system which would extend through the 16 States which are members of the compact. Six video circuits would be established along each route. In the 16-State area, there are 309 schools which possibly would be served with television facilities having 32 origination points and 228 distribution points therein and a total of 10,446 route miles in such system. A study of the spectrum space required to establish such microwave systems, they claimed, indicated a band 500 Mc. wide in the spectrum between 3000 and 6500 megacycles. On the basis of such study, it was suggested that additional microwave spectrum above 7000 Mc. (above 10,000 Mc. in most cases) be allocated for intracity systems in congested areas.

46. The Central Station Electrical Protection Association. This is a national association of companies engaged in furnishing fire and other protective services to industrial and business establishments throughout the United States. Microwave frequencies in the 890-960 megacycles band were requested to provide fixed circuit links between the protected premises and the association's central office.

47. Dage Television. This company contended there was need for non-broadcast television for private uses in fields of medicine, public safety, industry and education.

48. American District Telegraph Company. ADT requested that a portion of the spectrum space above 890 Mc. be allocated for a "protective alarm communication service."

49. Motorola, Inc. Motorola proposed that a liberalized licensing policy be adopted by the Commission for private point-to-point operations. It proposed that the microwave frequencies be allocated as follows:

Band (Mc.)	Proposed use
890-940	890-895 and 935-940 Mc.—Common Carrier.
	895-900 and 930-935 Mc.—Citizens.
•	900-930 McShared between ISM and Citizens with "better stabilized"
	ISM centered on 915 Mc.
1300-1700	1300-1320 Mc. for mobile service if public demand warrants reassignment.
6425-6875	6425-6575 Mc. to be added to adjacent Operational Fixed band and provide
•	new band 6425 to 6875 Mc.
11,700-12,700	11,700-12,200 Mc. to be added to adjacent Operational Fixed band.
16,000-18,000	16,000–16,700 Mc. to Operational Fixed.
	16,700-17,300 Mc. to hold for future development.
-	17,300-18,000 Mc. to Common Carrier.
26,000-30,000	26,000–27,400 Mc.—Common Carrier.
	27,400-28,600 Mc.—Hold for future development.
	28,600-30,000 Mc.—Operational Fixed.

50. Electronics Industries Association (EIA). EIA, while not itself a user or proposed user of microwavé, presented testimony as to the present and future demands for microwave frequencies. It was stated that most stations now use microwave frequencies below 13.000 Mc. and that, generally, equipments for operation on frequencies above 13,000 Mc. are not readily available at reasonable cost. A survey made by EIA of its member companies indicated that by 1966, on the basis of present eligibility, the number of microwave stations would range from a high of 9,800 to a low of 3,600. or an average of 7,600 stations, and that by 1976 the range would be from a high of 15,000 to a low of 6,000, or an average of 12,000 stations. On the basis of expanded eligibility to include uses expected for banks, newspapers, retail stores, brokerage and insurance companies, etc., the station estimates ranged from a high of 12,000 to a low of 6,000, or an average of 10,000 stations in 1966, and from a high of 21,000 to a low of 11,000, or an average of 18,000 stations by 1976.

51. According to EIA, as of January 1, 1957, about nine-tenths of the private microwave systems were located in open country areas and about one-tenth were located in urban areas. Thus, it is claimed that, if the percentage remains the same, there would be a maximum of 2,100 stations in terminal areas by 1976.

terminal areas in the future, there will be a maximum of 4,200 private microwave stations in terminal areas by 1976. In this connection, it claimed that as of January 1, 1957, a study of the 82 largest cities in the country showed that there were 38 private microwave stations in the Los Angeles area: that the San Francisco-Oakland area had 13 such stations: that the New York City-NE New Jersey area had only three such stations; and that Chicago had only two stations. balance of the private microwave stations located in the 82 cities ranged from nine stations in Phoenix, Arizona, to no stations in many cities. It was claimed that if future trends should continue in those cities there would be adequate frequencies, even in Los Angeles which had the largest number of such stations.

52. EIA stated that microwave is now used mostly for voice communication, teletype, remote VHF, facsimile, and that it expected that most of the probable future needs will develop for such purposes, plus remote industrial TV and data processing purposes. It was expected that potential users of private microwave systems would develop among the following:

a. Users having a type of business that requires communication along a "right-of-way"—quite often across open country not always paralleled by exist-

ing communications facilities.

b. Remote area operations which are

Band (Mc.)

c. Public safety agencies where reliability is of primary concern, particularly during times of emergency.

d. Operations which require a large quantity and/or variety of communications functions between separated operational centers.

e. Operations which require highly specialized communications circuits which are not readily or economically obtainable over wire communications systems, such as for TV, and to provide

for protective relaying purposes in connection with the transmission of electrical power.

f. The user has a high degree of responsibility to the public and must therefore exercise control over his own communications. (Not otherwise explained.)

g. Combinations of the above.

53. EIA proposed that the frequencies above 890 Mc. should be allocated as follows:

890-940	ISM (primary).
890-895	Citizens Fixed and Mobile (NG13) secondary.
935-940	Citizens Fixed and Mobile (NG15) secondary.
895-935	No sharing with possible exception of amateur.
2300-2350	Fixed and Mobile.
2350-2370	Amateur.
2370-2500	ISM (primary) and Amateur (secondary).
3500-3700	New developments such as: Domestic Public Aeronautical Mobile, Trans-
	portable Operational Fixed, Radar for Traffic Guidance Control, or Anti-
	collision Devices.
5650-5925	ISM (primary) Amateur (secondary).
6425-6575	Operational Fixed, Broadcast Fixed and International Control.
6575-6875	No change.
6875-7125	TV pickup and STL:
11,700-12,200	Operational Fixed, Broadcast Fixed, and International Control.
12,200-12,700	No change.
12,700-13,225	TV pickup and STL.
16,000-16,600	New Developments.
16,600-17,300	Operational Fixed and International Control.
17,300-18,000	Common Carrier Fixed.
18,000-21,000	Government.
	ISM (primary).
21,000-22,030	Amateur.
22,000-26,000	Government.
26.000-27.300	New Developments.

Proposed use

BENEFITS WHICH ACCRUE TO THE USER AND THE GENERAL PUBLIC FROM USE OF MICROWAVE FREQUENCIES FOR PRIVATE POINT-TO-POINT SYSTEMS

28.600-30.000 Common Carrier Fixed.

27,300-28,600__ Operational Fixed and International Control.

54. There was a direct conflict of views between the private users and the common carriers as to the benefits which accrue to users and the general public from the use of microwave frequencies for private systems. The common carriers claimed that the users and the general public would be better served by obtaining services from the common carriers and that unrestricted licensing of private systems would adversely affect the public interest. Conversely, they claimed that the following benefits would accrue to the public from the use of common carrier microwave service:

a. Closely regulated operation of common carrier systems would result in lower cost to the public.

b. Common carrier usage would result in greater efficiency in frequency utilization.

c. Common carrier microwave systems would be integrated into wireline operations to provide the backbone for a communications system in this country which is essential to national defense. It was claimed that only common carriers are in a position to provide necessary alternate routes and switching facilities which are essential to national defense.

55. On the other hand, the private users claimed that the following benefits would accrue to users and the gen-

eral public by the allocation of microwave frequencies for private point-to-point systems:

a. Private microwave systems would provide increased efficiency in operations and the resultant increased productivity would benefit the user directly and the public indirectly through lower costs of goods, services, and commodities.

b. Control by the user is necessary in order that a user may establish his own order of priority as to repairs, maintenance, etc. Otherwise, he would have to depend upon the common carrier for its order of priority for such work. Such private systems would provide for greater flexibility in providing communications service.

c. Private systems would provide for a fall-back system in case of the destruction or disablement of common carrier systems in time of emergency.

Issue No. 2. "Are frequencies for pointto-point use available in sufficient number so that there is no necessity for the Commission to make determinations as to (a) the relative needs of potential users; (b) which of such potential users should be allocated spectrum space; or (c) the permissible use of such frequencies? If because of shortages of frequencies or facilities common carriers would be unable to satisfy the needs of all potential users of leased circuits. should there be established a system of priorities to insure availability of facilities to meet the most essential requirements?"

56. The Electronics Industries Association (EIA) formerly Radio Electronicts Television Manufacturers Association (RETMA), took the position that, while there were not unlimited microwave frequencies available, there are sufficient frequencies to accommodate all possible users of private microwave systems in the foreseeable future, thereby making it unnecessary for the Commission to establish priorities or restrict eligibility. These conclusions were based upon a study of the present allocations of frequencies to the Operational Fixed Service above 890 Mc., i.e., for private microwave systems. According to EIA, over 6,000 man-hours were expended in such study. Based upon technical standards set forth in its Exhibits Nos. 20, 21, and 22, covering such aspects as assignable frequency pairs, frequency stability and power of the transmitters, modulation requirements, types of emission and emission limitations, and antenna characteristics, EIA evolved a Step 1 procedure which would indicate the number of private microwave stations that could be installed in a given area of 100 miles square (10,000 square miles). Such study assumed that:

a. All systems run in straight lines.

b. All systems operate on a 2-frequency basis.

c. All stations of any one system are repeater stations and are separated by 25 miles.
d. All stations are operating with

d. All stations are operating with maximum permissible effective radiated power.

It was the opinion of EIA that the designs of existing equipment largely adhere to the proposed standards and that its study considered antenna pattern characteristics currently practical today. The EIA proposal contemplates the assignment of frequencies in the Operational Fixed or Fixed and Mobile bands as follows:

Frequency band (Mc.)	Number of channels	Bandwidth
952-960	16	500 kc.
1830-1990	14	10 Me.
2110-2200	9	10 Me.
2450-2500	5	10 Me.
2500-2700	20	10 Me.
6575-6875	15	20 Me.

In addition, it proposed that the band 12,200–12,700 Mc. be allocated for developmental purposes with a bandwidth not to exceed 50 Mc.

57. Under its Step 1 procedure, explained hereinafter, and using the above criteria, it was estimated that 1.880 stations could be accommodated in an area 100 miles square in open country (3,580 if the 12 Kmc. band were included) and 882 stations could be accommodated in terminal areas (1,452 if the 12 Kmc. band were included). According to EIA, the figure of 882 stations in terminal areas was based upon the use of antennas of "Maximum" size. However, based upon antennas of "Practical" size, the number of stations in terminal areas would be reduced to 742. The number of stations which could be accommodated in terminal areas under the various conditions were shown as follows:

6450

	"Maxi	mum" anten	na size	"Practical" antenna size		
Frequency band (Mc.)	Antenna aperture (feet)	Diameter of circular area (miles)	Number of stations	Antenna aperture (feet)	Diameter of circular area (miles)	stations
\$30-960	36. 1 17. 4 15. 5 13. 0 7. 0	11.1 .41 .31 .56	290 84 48 180 280	10. 0 10. 0 9. 0 8. 0	33. 5 24. 8 23. 2 18. 7	232 70 40 120 40
Total			832			742

It was emphasized, however, that this was not a saturation point but only the point at which additional system engineering efforts (EFA's Step 2 procedure) would be necessary to install other stations. Further, EIA stated that developments such as increased frequency stabilities, improved antenna systems and multiplexing systems held out promise of increased spectrum usage.

58. The Step 1 procedure indicated above was based on the fact that the highly directive antennas used at the microwave stations concentrate nearly all the energy in one direction not unlike a "pencil beam", but that, in addition to the radiation in the major lobe, there are also side and back lobes which result in energy being transmitted in unwanted directions. Each antenna and each installation would produce different characteristics so that it is not possible to predict in advance the actual interference areas around each antenna. In order to overcome this difficulty EIA proposed that an area, large enough to contain all possible combinations, be kept free from other stations operating on the same frequency. The shape of this area was described as being similar to a large keyhole with each transmitter location in the center of the round portion and the main lobe in the elongated portion. Other stations, even though they might be operating on the same frequency as the first, may be located anywhere outside the keyhole area without creating any interference to the first station.

59. Step 2 is similar to Step I but more detailed engineering study is required in reference to side and back lobes and it is assumed that in many cases the area of protection around each station may be reduced so that more stations may be accommodated in a given area. It is claimed to be possible to increase the number of stations in any area by resorting to the Step 2 procedure because of the large differential between the assumed "keyhole area" and the actual antenna coverage.

60. EIA took the position that their calculations were conservative for the following reasons:

a. They assumed a liberal antenna envelope pattern which gives a much broader main beam angle than is found in practical systems.

b. They assumed that the receiver would be equipped with a ten foot antenna which is much larger than the antennas generally used.

c. They assumed that all transmitters are using a maximum allowable power of 7 watts whereas the stations now operating in the 6000 Mc band are using

power from one-tenth to one watt. Thus, if a station uses one-tenth watt power, the actual distance to the interfering station for line-of-sight systems could be decreased eight times from the assumed distance.

d. In many cases the minimum separation between stations was arbitrarily increased from the calculated values to take into account the fact that in some cases an interfering transmitter might be located on a high mountain. The calculations have been based upon a 45-mile line-of-sight path between antennas which assumes rather smooth terrain. In practice, intervening hills will provide considerable shielding of signals, thus permitting closer station separation.

e. The analysis does not assume any benefit from cross polarization between stations as a method of reducing potential interference.

61. AT&T took the position that the plan of EIA was idealistic and impractical for the following reasons:

a. EIA assumed that interference will occur when the interfering signal level exceeds the thermal noise level of reasonably typical receivers in systems with typical radiation characteristics.

b. EIA's proposal does not take into account the effects of the so-called "Rayleigh" fading or abnormal super-refraction conditions.

c. EIA proposed systems would run in straight lines instead of a zig-zag fashion.

d. The EIA plan contemplates a 2-frequency system.

e. The EIA plan assumes that all stations would be located in a geometric pattern which does not take into account site and zoning problems.

f. The EIA study is based upon an area 100 miles square or 10,000 square miles which is larger than the State of New Jersey (7,800 sq. mi.). A typical terminal area would not be greater than 100 square miles. Therefore, if the 1,300 possible stations in the 10,000 square mile area is reduced to the number that can be accommodated in 100 square miles there would be only 18 stations which could be established in the latter area.

g. The EIA report did not consider the bandwidth required for each system. A broad band would tend to reduce the number of systems that can be accommodated in a given area.

h. Stations cannot be located in any idealistic geometric pattern because drop-offs must be located at or near cities along the route.

i. It does not make provision for intracity systems.

62. With respect to the alleged interference, AT&T reported that, in the de-

velopment of their TD-2 equipment, they were faced with the problem of interference—not from interfering systems but from interfering tones within their own system (so-called "birdies")and they underestimated the effects of an interfering carrier several megacycles removed from the desired signal by 40 or 50 db. In reply, EIA stated that this problem had been considered and that it was agreed that it was possible to obtain "birdies." However, they claimed that protection in the order of 40 to 50 db is somewhat exaggerated because in order to obtain "birdies" the interfered with and the interfering carrier should both be very stable and furthermore the interfering carrier should be unmodulated or only very slightly modulated in order that its full energy will fall into one voice channel. In EIA's opinion, these conditions are highly improbable because in practice almost all micro-wave carriers are continuously modulated and even if the full energy of the interfering carrier would fall into a single voice channel, at the most only about 30 db decrease in its power would be sufficient to make it equal to background noise. They further contended that while this standard of interference may not be good enough for systems transmitting high quality broad-band signals, such as TV, over long distances, it is quite adequate for most privately owned systems.

63. AT&T did not elaborate on its objection that the EIA study did not consider the effects of "Rayleigh" fading or super-refraction conditions. EIA, however, noted that super-refraction conditions do exist and on rare occasions have been observed to result in beyond-the-horizon attenuation approaching free space values. They stated, however, that the available data are extremely limited and are probably unreliable and, therefore, unduly pessimistic. It was the opinion of EIA that these effects would not significantly increase the length of time during which interference between systems might be experienced when considered over a long

period of time.

64. AT&T claimed that, in its experience with microwave systems, it was necessary that the stations be located in a zig-zag pattern because-it had been found that the signals from the first station will be received by the second station as intended but sometimes will also be received by the fourth station in the system and thereby cause interference at that station. The failure to establish stations in a zig-zag pattern, according to AT&T, would make it impossible to have as many stations in an area as EIA predicted. In reply, EIA admitted that practical systems can profit by zig-zagging and avoid interference at the third hop receiver. However, it was claimed that zig-zagging sufficiently to avoid interference would affect its frequency utilization numbers in open areas by the factor of 2 at most. Further, EIA added that their study was based upon the assumption that all systems would use a relatively small antenna, while in practice usually much larger antennas are used having much smaller main beams and thus not only

the necessary zig-zagging is much smaller but also the spacing between parallel systems would be considerably reduced.

65. With respect to the question of ETA's proposed 2-frequency system operations, the AT&T spokesman stated that, insofar as the 6000 Mc. band is concerned, current practice generally is to use a 4-frequency plan for private systems. Also, it was claimed that in order to obtain good reliability in the 6000 Mc. band, frequency diversity should be used but the EIA plan did not provide for it. On the first point, EIA contended that, while it might seem at first blush that the use of a 4-frequency system would cut frequency utilization in half, in actual operation the frequencies are used less often and the geographical area covered by each frequency is approximately half of what it would be if only two frequencies were used. Thus, EIA claims, the use of four frequencies by each system will not change the spectrum capacity. No comment was made by EIA as to the use of frequency

66. Turning to the matter of suitable antenna sites and zoning problems, AT&T stated that selection of suitable sites has been a major problem since it is often necessary to try several sites before one is found to be satisfactory. They stated that if one site is relocated, it frequently requires relocation of other sites. In particular, they stated that problems are encountered in over-water paths and that even in open country problems are encountered such as reflections from corn fields. Moreover, due to zoning regulations, restrictions on tower heights, cost of real estate in built up areas, etc., and that it is not always possible to locate stations at the most desirable spot as the EIA plan supposes. EIA replied that the Committee's assumptions are not as idealistic as they may appear from superficial re-. view of the study, but that actually the assumptions are conservative for the reasons set forth in paragraph 60 above. Further, as to the geometric pattern of their plan, EIA admitted that such an orderly arrangement of stations is unlikely in practice, but it was their opinion that in practice the application of special detailed engineering analysis would substantially compensate for this lack of orderly arrangement.

67. Finally, AT&T argued that any study of frequency usage should include cross-polarization as one of the tools to get greater efficiency. They noted that they had been unable to find any reference to it in the EIA report. In reply, EIA admitted that they had not assumed any benefit from cross-polarization between systems as a method of reducing potential interference. They stated that this valuable technique is considered difficult to apply for all systems where planning cannot be completely coordinated between the parties involved. It is a safety factor which can be reserved for those cases where it is needed. In sum, they took the position that this would be an added benefit for their proposed frequency utilization plan.

68. In general, the private users concurred in the conclusions of EIA that there were adequate frequencies available for private systems. Accordingly, they took the position that it would not be necessary to set up any system of priorities based upon the relative needs of users. It was the consensus, however, that, if there were a shortage of frequencies, a system of priorities would be desirable. It was generally agreed that the public safety services should receive top priority but each of the private users argued that his needs were next in order of priority to such public safety users.

69. Using the EIA proposal, Motorola made a study of the microwave systems which could be accommodated in the Los Angeles, California, area. It was stated that Los Angeles was chosen because of demonstrated growth potential complicated by a certain degree of limited convenient access by microwave systems (i.e., the area is bound on the south and southwest by the Pacific Ocean and on the north, east and west by mountain ranges). It was argued. therefore, that access to the Los Angeles area is such as to provide a very pessimistic picture. Although there are many peaks in the area, only six microwave relay points were used in the study, apparently to show how microwave communications could be brought into an area even under unfavorable conditions. It suggested that the same level of performance could be expected in any other area provided there are at least six "points of entry." The systems under consideration would come into the area from one of the six peaks and terminate within, or on the periphery of, a circle 11.1 miles in diameter which includes the Los Angeles business district. The 11.1 mile circle is also significant in that it is the smallest circle on which radially directed systems of the 925 Mc. band may terminate. Systems operating on the higher frequency bands would require less space. For example, in the 6725 Mc. band, systems could be installed on the periphery of a circle one mile in diameter. The study concluded that, using those frequency bands not allocated for use by private microwave systems, a total of 807 systems may work into the 11.1 mile circular area from the six mountain peaks selected. The breakdown by frequency bands is as follows:

Band Me.1	925	1920	2155	2575	6725	12, 450
Number of sys- tems	232	42	24	120	133	256

¹ Frequencies shown are the center frequencies of the band involved.

70. NCUR also submitted an exhibit (No. 12) showing the present microwave installations in the Los Angeles area and plotted the anticipated future needs of the electric, gas and water utilities in that area.

Issue No. 3. "Where (geographically and spectrumwise) would assignment of frequencies for private point-to-point systems without limitations create problems of harmful interference either from (a) limited availability of suitable sites

for transmitters and receivers; (b) terminal congestion resulting from the desire to terminate multiple systems at a common geographical location; or (c) other pertinent conditions."

71. As indicated above, the testimony of EIA related principally to the establishment of private microwave systems although they claimed that their standards could be applied by the common carriers. Most of the private users stated they concurred in EIA's testimony on this issue, as well as other issues. It was EIA's position that there would be no frequency congestion in the foreseeable future provided there is proper coordination in selecting frequencies. In the event that congestion were to occur it would probably be at terminals in the larger cities and in frequency bands below 10,000 Mc. in which case frequencies above 10,000 Mc. could be used at the terminals of long-haul systems or service brought into the congested area by means of wirelines or cables operated by common carriers. EIA admitted that terminal congestion is a potential problem to be recognized, but stated it can be solved by the use of the proposed congestion area rules, sharing, use of higher frequencies, etc. Moreover, it was generally conceded that the extent of usage of frequencies is controlled to a material extent by the availability of transmitter and receiver sites. This again is a problem which apparently is localized mostly in the larger metropolitan areas, and although there may appear to be limitations on the availability of suitable sites, it was claimed by EIA that there are no known areas that present problems which cannot be solved.

72. EIA stated that it recognizes that the very nature of microwave systems is such as to concentrate equipment locations in areas which are advantageous either by reason of their geographical characteristics or population density, accessibility to commercial power, or nearness to established communication routes. Therefore, it was testified, assignment of frequencies without technical limitations for either private or common carrier point-to-point systems would produce harmful conditions to the service involved. But careful selection of frequencies, and taking advantage of directivity characteristics involved, will result in utilization of the spectrum in a manner to accommodate a substantial number of microwave systems. It observed that intracity microwave systems which use frequencies above 10,000 Mc. will be characterized by even lower power, shorter hops, narrower antenna beams, and larger channel capabilities. It averred that maximum terminal concentration can best be obtained by enforcing more strict criteria for such systems than is required for open country systems. Two basic controls are (1) limitation of field intensity of the incoming signal at the receiving antenna, and (2) grouping of outgoing transmit and incoming receive frequencies. Finally, it stated that the enforcement of restricted criteria requires that the area be defined so that there may be orderly system planning and undue economic hardship C152 NOTICES

avoided. Such a plan may take into a non-profit, cost-sharing basis would that licensing of private systems to comaccount:

not only be feasible but also desirable. pete with the common carriers would

a. Population density.

- b. User type and concentration.
- c. Geographical sector of entry into the area.
- d. Number of channels in use versus total number of channels available.
 - e. Factors affecting rate of growth.

73. The position of the common carriers was in contrast to that of EIA and the private users. As indicated previously, American Telephone & Telegraph claimed that there were not adequate frequencies available, particularly in certain congested terminal areas and that the frequency band 3700-4200 Mc. is virtually saturated in five of the larger cities in the United States. Also, it expected that the higher frequency bands (generally at or below 10.000 Mc.) would be fully utilized by common carriers within a relatively short time. However, it was admitted that there was no city at the present time where additional use could not be made.

74. It was generally conceded by all parties that there is very little use of frequencies above 10,000 Mc. at the present time, and the use of frequencies above 30,000 Mc. is virtually nonexistent.

Issue No. 4. "If limitations are warranted for private point-to-point use, what standards of eligibility should be adopted? Should they be established on a geographical basis?"

75. The common carriers are opposed to licensing any private systems except public safety organizations and the so-called right-of-way companies. The latter group is normally considered to include the railroads, petroleum and gas pipe line companies, and power companies. The rationalization given for excepting this latter group is primarily that these organizations have needs for communications facilities in areas which generally do not parallel common carrier systems.

76. The private users, in contrast. generally argued that limitations on private use are not warranted at present. They recommended that liberal rules of eligibility be adopted and that they be given freedom of choice in determining whether they would establish their own systems or whether they would obtain service from the common carriers. This group generally were opposed to the establishment of limitations on a geographical basis. In any case, however, if such limitations are warranted, top priority as to eligibility should be given to public safety organizations involving the protection of life and property. The American Trucking Association believes that preference should be given to the right-of-way companies, but that motor carriers should be included in such concept because they operate over specifically prescribed routes.

Issue No. 5. "To what extent, if any, should the Commission permit or require the sharing of private point-to-point microwave systems."

77. The private users were virtually unanimous in their recommendations that the Commission should provide for the voluntary sharing of private microwave systems. Several groups suggested that the operation of such systems on

a non-profit, cost-sharing basis would not only be feasible but also desirable. However, the common carriers took the position that the Commission should not permit the sharing of private microwave systems because it would result in an aggravated form of "cream skimming", and, if permitted, would "snowball" to unreasonable proportions. It was claimed that the net effect of such unrestricted use would be that the common carriers would find it increasingly more difficult to meet the service requirements of the remaining communications users in the area.

Issue No. 6. "Apart from other considerations, should the Commission consider the availability of common carrier facilities as a condition of eligibility?"

78. The private users uniformly took the position that the Commission should not consider the availability of common carrier facilities as a condition of eligibility for a private point-to-point microwave system. It was their position that they should have the right to use such frequencies without regard to the availability of common carrier facilities and that they should be allowed either to establish their own systems or obtain service from common carriers. Some private users argued that to so condition grants would permit the common carriers to control the granting of such authorizations. ARINC stated that the granting of new assignments should be based upon the merits of the particular case and not on the question of eligibility, and that microwave systems should be authorized on a first-come, first-served basis, with the present bands now allocated to operational fixed service being retained.

79. The common carriers (except the National Mobile Radio System) generally took the position that the Commission should consider the availability of common carrier facilities and should not grant private systems if common carrier facilities are available within a reasonable length of time. In remote areas, common carriers should be given the opportunity to provide service. If unable to do so, the private system could go in provided that it is amortized when common carrier service becomes available.

Issue No. 7. "What effect would the authorization of private point-to-point systems where common carrier facilities are available have on the ability of the common carriers to serve the general public and, if such effect is detrimental, the specific nature, extent and magnitude of such detriment?"

80. The common carriers argued that if the Commission adopts a policy of permitting private systems to compete with the common carriers in the areas where common carrier facilities are available or could be made available, it would have a serious and detrimental effect upon such carriers and the general public. They claimed that such a policy would hamper the improvement and expansion of an efficient nationwide communications service. They further claimed that regulatory bodies would be reluctant to require or urge telephone companies to install facilities when their economic well-being might be impaired by competition from private systems;

pete with the common carriers would unnecessarily increase the demands for and use of radio frequencies, contrary to the need for conservation in the public interest of the limited amount of spectrum space available. The Bell System witnesses contended that to permit the licensing of private systems where common carrier facilities are available would cause irreparable harm to the telephone company's ability to provide a basic nationwide communication service, which is vital in times of peace but indispensable in times of national emergency. Also, they claimed that widespread li-censing of private systems would not only increase the cost of communications to the nation's economy as a whole, but would cast an added burden upon the individual and the small businessman who would continue to rely on common carriers. This would cause either (1) a drastic revision of rate schedules, or (2) great financial harm to the carriers, or (3) a combination of both.

81. Except for USITA, the common carriers generally do not object to the continued licensing of public safety agencies and the right-of-way companies. The USITA does not object to the use of private microwave systems by public safety organizations or right-ofway companies for operational communications, but would object if such organizations diverted administrative traffic to the system. It was admitted, however, that establishing a breakdown between operational and administrative traffic would be very difficult, but confidence was expressed that the Commission would be "able to meet all of those problems as it has other problems of the same nature."

82. The private users, on the other hand, claimed that little or no detrimental effect would occur to common carriers and the public if private systems were authorized even though common carrier facilities are available. Many of them argued that the telephone common carriers should devote their attention to filling back orders for telephone service, which would offset some revenue loss. Very little specific information was adduced as to the extent and magnitude of any such detriment, perhaps, in part at least, because of the many variables and uncertainties as to the extent and nature of the private systems that would be established. However, one of the private users (McLean Trucking Company) stated that the establishment of a private system by it would reduce by over 50 percent the number of teletype circuits it is obtaining from the common carriers. Similarly, in the case of Central Freight Lines, it was indicated that the establishment of a private microwave system between Dallas and Ft. Worth, Texas, would result in a 100 percent loss of business to Western Union for the communications facilities it now furnishes Central Freight between those points. Nevertheless, most of the private users argued that the establishment of private systems would not adversely affect the carriers, because such private communications systems would generate more communications for the common carriers to offset the revenue

which might be lost to them as a result of the establishment of such private systems. In particular, it was claimed that additional revenue would accrue to the telephone carriers because private users would lease more wireline connections to tie in smaller terminals with the principal microwave systems.

83. In an effort to show the magnitude and effect of the establishment of private systems on the telephone company. Motorola made a study entitled "Effect of Private Microwave Installations on 1966 Bell Telephone Potential Gross Revenue." The study was based upon an EIA marketing report released April 4, 1957, which showed the number of private microwave stations which were expected to be installed over the tenyear period ending 1966. It assumed that there would be expanded eligibility and it included all classes of private microwave stations. It was assumed that there would be 10,000 private microwave systems by 1966. It was further assumed that the RF path mileage between the stations would average 25 miles; that 40 percent of the stations will be repeaters and will have 25 miles of path associated with them and the remaining 60 percent will be terminals which would have 12.5 miles associated with them; that there would be an average loading of 25 channels; and that 60 percent of such channels would be used for voice and the remaining 40 percent would be used for teletype, telemetering, control and data transmission circuits, etc. On the basis of these assumptions, it was estimated that the annual loss to the Bell System in gross private line revenue would be \$315 million. The projected Bell System gross revenue was based on an analysis of Bell System gross revenue over the past 10 years which had been expanding at an average rate of about 12.4 percent compounded annually. A projection of that revenue trend indicated that Bell System revenues might be \$18.6 billion by 1966. However, the projection actually used by Motorola was based upon the assumption that the Bell System annual gross revenue would almost double in 10 years and, therefore, the figure of \$11 billion was used in Motorola's calculations. Percentagewise, Motorola claimed that such loss would only amount to 2.87 percent. In this connection, Dage television claimed, in a statement it filed. that by excluding the right-of-way companies this would be reduced to 1.5 percent. No estimate was made as to the percentage of revenues which would be lost if both the public safety group and the right-of-way companies were excluded. Nor is there any evidence in the record to show what percentage of the revenues would come from systems located in areas where facilities of common carriers are available.

84. AT&T argued that the Motorola study is wholly unconvincing since it relates a bare minimum of diversion (only private line) to the greatest possible mass (total gross revenues). Thus, AT&T argued that not attempt was made to relate the expected diversion to private line business alone. Additionally, AT&T pointed out that there was no attempt made to measure the large amounts of that they can provide the nationwide message toll traffic which would be diverted to the private microwave facilities which would be able to be used "without charge."

85. No studies or data were shown as to the effect the licensing of private systems would have upon Western Union, the independent telephone companies, or other common carriers. However, Western Union pointed out that more than 75 percent of its gross revenues come from 125 cities and that 75 percent of that volume comes from business firms. It claims that because of the above, and in view of its marginal operations, the diversions from such revenues by private users would seriously impair its ability to provide a nationwide telegraph system.

Issue No. 8. "Is there any obligation on the part of the Commission under the provisions of the Communications Act to protect the users of common carrier service from any adverse economic effects that the carriers might suffer from the operation of private point-topoint systems? If there is no statutory obligation, is it desirable in the public interest for the Commission to establish

this as a matter of policy?"

86. Virtually all the parties who commented on this issue did so by briefs. There was a sharp cleavage between the positions taken by the common carriers and the private users on this point. The common carriers argued that the Commission is obligated to act in the public interest under the terms of the Communications Act and that this imposes upon it the duty of protecting them from the loss of business which they would suffer in the event of increased eligibility for microwave facilities. In any case, they contended that the Commission should, as a matter of policy, protect them from adverse economic effects which they claim would result from the establishment of private microwave systems. The private users, on the other hand, took the position that the Commission is not under any statutory obligation to protect the carriers against the adverse effects of competition from private microwave users and that it would not be desirable as a matter of policy for the Commission to deny individuals their freedom of choice as to the means of communication which they would employ. The positions of the parties are set forth more fully hereinafter.

87. Turning first to the common carriers, it was their position that the Commission is under a statutory duty to protect and foster a nationwide communication system. This was based upon the word "system" in section 1 of the Act which was interpreted by them to mean a common carrier system. They stated that their duty to maintain such a system could not be discharged unless they were protected from the type of competition envisaged here. In addition to section 1 of the Act, it was urged that section 214 of the Act gives the Commission complementary regulatory powers over common carrier operations which impose a duty upon it to assure that the sound economic existence of the common carriers is preserved in order

communications network required by section 1. They argued that, where there is a conflict of public and private interests, it is for the Commission to protect the public interest as set forth in sections 303 and 307 of the Act in order that the greatest good may be accomplished for the greatest number of persons. They further argued that if the Commission were to extend microwave eligibility to all those who seek it, the common carriers would stand to lose so much revenue that they would have to compensate for it by increasing their rates to the general public. It was claimed that such action would not be in the public interest since all the people would suffer to compensate for microwave systems utilized by only a few individuals. Moreover, it was claimed that a duplication of facilities would be wasteful and that such waste is not in the public interest. The carriers argued strenuously that there is no national policy in favor of competition,5 and, anticipating the arguments of the private users, stated that section 314 of the Act is limited to competition between cable and radio in international communications. In this connection, Western Union claimed that, since the telegraph companies compete with telephone, private lines, and air mail, the addition of another competitive possibility, namely a private point-to-point communications system, would be, in fact, a perversion of the concept of competition and might well destroy the ability of the telegraph company to operate at all.

88. Apart from its alleged statutory obligation under the Communications Act, they urged that the Commission, as a matter of policy, should make certain that the common carriers are protected in their activities. The reasons given by the common carriers to support their position were as follows:

a. Open eligibility of private users would adversely affect the national defense.

b. Open eligibility would result in the general public paying more money for less adequate service.

c. There would be conditions of chaos prevalent if eligibility were extended because the microwave spectrum has finite limits within which there would be conflicts as to licensees.

89. The positions of the private users under this issue are summarized as follows:

a. The "public convenience, interest, or necessity" provision of section 307(a) of the Communications Act precludes preferential treatment of the carriers at the expense of private users. The legislative history of the Radio Act of 1927 and the Communications Act of 1934 evidences an intention to avoid restricting competition between private individuals and common carriers. It was claimed that the phrase "public interest, convenience, or necessity" was included in section 9 of the 1927 Act and later incorporated into section 307(a) of the Communications Act. The phrase "any

⁵ Citing F.C.C. v. RCA Communications, Inc., 346 U.C. 86, 91 (1953).

applicant" of section 307(a) is interpreted to mean that all potential users of radio must be licensed provided they can meet the test of public convenience, interest, or necessity. While it was admitted that the availability of common carrier facilities might be a factor in determining what was in furtherance of this public convenience, interest, or necessity, it was argued that the availability factor alone could not be the determinative point on which private licenses could be denied, and that to deny arbitrarily the use of a portion of the radio spectrum to private users would flaunt the policy of the Communications Act which is to make the limited natural resources of the usable spectrum available to any applicant who can meet the public interest test. In this connection, reference was made to the mobile communications field wherein private users are licensed to use mobile communications facilities even though they are in direct competition with the common carriers in providing similar mobile radio communications services.

b. Title II of the Act is designed to protect common carriers from competition from other common carriers, but it does not contemplate protecting common carriers from competition from private users. It was noted that the carriers regulated under Title II are only those engaged in interstate or foreign commerce and it was claimed that if the Commission were to restrict eligibility to common carriers, it would in many cases be acting for the benefit of intrastate common carriers whose operations were beyond the Commission's jurisdiction to regulate.

c. Sections 311, 313, and 314 of the Communications Act evidence a clearly defined national policy in favor of free

competition.

d. Section 307(b) of the Communications Act contemplates an equitable distribution of licenses and frequencies between common carriers and private users.

e. Section 303(g) of the Act requires the Commission to study new uses for radio and to encourage its development. Failure to provide for individual and private usages in the microwave field would be contrary to the purposes and intent of this section.

f. The Commission is charged with upholding the Anti-trust Laws which further the national policy in favor of competition enunciated in section 311, 313, and 314 of the Communications Act.

g. To protect the common carriers at the expense of the private users and to establish such a policy at this time would not only be contrary to the public interest but inconsistent with prior Commission decisions and the national policy against monopoly. It was claimed that fostering competition provides the means whereby advances and great improvements in industry may be achieved and that private systems would provide an important facility in time of war and emergency.

Issue No. 9. "Would a policy of restricting or denying a private point-to-point system because common carrier facilities are available be inconsistent

with any of the provisions of the Commuications Act? Would such restrictions result in a lessening of competition or a fostering of monopoly in the manufacture, sale, use, or provision of communications facilities contrary to the public interest?"

90. As is Issue No. 8, virtually all the parties who commented on this issue did so by briefs. In addition, the Department of Justice and the Office of Civil and Defense Mobilization (OCDM) filed statements. Also, as in Issue No. 8, there was a sharp cleavage on this point between the common carriers and the private users. The common carriers argued that the restriction or denial of private systems when common carrier facilities are available would not be inconsistent with any provisions of the Communications Act and that there would not result therefrom any lessening of competition or a fostering of a monopoly in the manufacture, sale, use, or provision of communications facilities contrary to the public interest. On the other hand, the private users argued that any such limitation or restriction would violate the Act, and that such restriction will lesson competition and foster monopoly in the manufacture, sale, use or provision of communications facilities in violation of the Anti-trust Laws.

91. The Department of Justice, in its letter dated March 28, 1957, pointed out, among other things, that it was their duty to enforce the Federal Anti-trust Laws. It was their opinion that, by preferring common carrier operation of microwave systems, competition would be distinctly lessened and monopoly encouraged in the manufacture, sale, and use of communications facilities adapted to this area of service. The Department of Justice further stated:

We believe that section 314 of the Communications Act indicates a Congressional intent to rely upon competition to regulate and develop the communications field to the greatest possible extent. Those provisions of the Act regulating common carrier activities proceed upon the principle that direct regulation must be substituted for competition. This principle is inconsistent with the principle of competition, and is applicable in those areas where the common carriers already had monopolies when the Communications Act of 1934 was enacted. There is nothing in the Communications Act to indicate that any particular portion of the radio spectrum, such as the microwave region, should be turned over to the common carriers. We believe that re-conciliation of the two methods of regulation requires that the common carrier concept be given as limited application as the terms of the Communications Act will permit.

92. By letter of January 6, 1958, OCDM stated that in time of war or national emergency even one channel of communication remaining after enemy action may assure ultimate success. It urged, therefore, that provision be made for an integrated nationwide communications network because the performance of such a system is a vital necessity to survival after attack. Thus, it suggested that it is reasonable to expect that priorities should be given to common carriers if there were any

shortage of frequencies. OCDM further stated that, from a national defense planning standpoint, private systems used for public safety, or for a public utility, any form of transportation, or of other vital industry would contribute, to a limited extent, to the national defense. They took the position, however, that from a national defense planning standpoint, the only prudent assumptions possible are that "such special systems, if vital, could be permitted to continue to operate for the purposes originally intended and that any additional service obtainable from them might assist on a limited localized scale, but would not make a comparable contribution to the national system so vital to adequate defense." OCDM did not suggest allocating the entire microwave spectrum to the common carriers, but stressed that the need of a national system of communications in times of defense emergency be given full weight among other pertinent considerations when frequency allocations are made. OCDM referred to the above-mentioned letter of the Department of Justice and stated that the interests of national defense do not call for a different interpretation.

93. In reply to the OCDM letter, EIA filed a letter dated March 31, 1958, in which it admitted that there was no question as to the essential nature of a nationwide coordinated communication service provided by communications common carriers. However, it argued that during wartime crises, the facilities of common carriers have been and will continue to be overburdened by an almost infinite demand for communications circuits, and that, in such times, communications demands which do not have to be provided by and transmitted over communication common carrier circuits should be met by alternative methods. They claimed that private systems developed during peacetime will be available during wartime to satisfy that part of the nation's communications needs which do not depend upon interconnection. Accordingly, they urged that the Commission recognize and provide for private communications systems.

94. The common carriers argued that the Commission not only has the power but the duty to license radio stations when this will serve the public interest. They contended that unrestricted licensing of private point-to-point microwave systems would result in economic waste and, therefore, would not be in the public interest. Insofar as Western Union is concerned, it claimed that duplication of facilities would result in economic loss to it and make it impossible to discharge its general obligation to serve the public because it would force drastic curtailment of its operations to the detriment of the general public. That the Commission has the power to adopt an availability criterion, the carriers claim, has been demonstrated by past actions of the Commission. In particular, reference was made to the Commission's Report in Docket No. 6651, dated February 20, 1948, where the Commission laid down a rule of restricting certain private systems where common carrier services were available, and to the proceeding in Docket No. 8963, wherein such policy was reaffirmed (Report of the Commission, adopted December 21, 1949, Mimeo F.C.C. 49-1680). Reference was also made to the Commission's decisions in its Memorandum Opinion, F.C.C. 54-152, released February 5, 1954, in which the Commission denied a petition for the establishment of a new manufacturers radio service, and also to In the Matter of J. E. Belknap and Associates (10 Pike & Fischer R.R. 517) where the Commission granted temporary authorizations for private stations pending the time when common carriers would be able to provide the desired service.

95. With respect to the question of monopoly and lessening of competition, the common carriers contend that there is a distinction to be crawn between furnishing common carrier service and the manufacture and sale of equipment. They claim that common carrier service is to be regulated by the Commission under the provisions of the Communications Act, while the equipment manufacturing business is controlled through the framework of the Antitrust Laws. They deny that a monopolistic manufacturing situation might ensue if the common carriers were given preference in microwave allocations. The independent telephone companies claimed that, insofar as they were concerned, there are no manufacturing subsidiaries for such companies and that they purchase equipment from microwave manufacturers on the open market. It is further claimed that the advantages of competition will be retained if telephone company affiliates are permitted to devote their energies toward developing and improving equipment for microwave systems. It was their position that there is no microwave industry, per se, but rather, the whole electronics industry which must be developed. They contend that such companies which have entered the field of microwave equipment manufacture under the present restricted eligibility conditions can look forward to increased markets under existing rules. They claimed that Western Electric does not have a majority of the business at the present time, and, therefore, since no monopoly now exists, to expand eligibility because of the vague and unsupported assertions concerning future effects of competition would be contrary to the Commission's duty under the Act. Insofar as Western Union is concerned, it states 'hat it is not engaged in the manufacture and sale of communications equipment, but, instead, buys its facilities on the open market. Therefore, it urges that antitrust questions should not be considered as far as Western Union is concerned and should not be allowed to react to its detriment.

96. As indicated above, the private users contend that the Commission may not impose, as a condition precedent to the issuance of authorizations for radio station licenses, any condition that they show that common carrier facilities are available. While it was admitted that availability might be one of the factors to be considered in determining whether

it would be in the public interest for the Commission to license a private microwave system, the private users contended that it could never constitute the sole ground for any such denial or restriction in view of the language of section 307(a) of the Act. Further, they claimed that such restriction would violate section 303(g) of the Act which requires the Commission to encourage the larger and more effective use of radio in the public interest. Also, it was claimed that such a policy would be contrary to the fair, efficient, equitable distribution of radio service required by section 307(b) of the Act.

97. Turning to the second part of Issue No. 9, the private users uniformly took the position that, if the Commission were to restrict private microwave where there is available common carrier service, there would be a lessening of competition and a fostering of a monopoly in the manufacture, sale and use of communications facilities contrary to the public interest. They claimed that such a policy would thwart the improvement and experimentation that accompany competition among manufacturers for the private users' market, and would kill the very incentive for common carriers to improve their service. The private users argued that to expand the eligibility would provide an incentive for private microwave manufacturers to develop equipment and thereby provide for larger and more effective competition in the microwave industry. This, in turn, would preclude or largely forestall the natural tendency to monopoly or lessening of competition on the part of the telephone company, which was claimed to be in a position of dominance in this field. In this connection, it was noted that AT&T owns 50 percent of the stock of Western Electric. Thus, it was claimed, it is only natural that AT&T would purchase most of its equipment from Western Electric and this would be to the detriment and injury of other competing radio manufacturers and would be an instrument for AT&T monopolization at least restraint contrary to section 313 of the Act. Thus, it was argued, in following a policy of denying private point-to-point systems where common carrier services are available. the diversity and competition involved in all phases of the communications service would be lost. Moreover, it was claimed that a common carrier monopoly in this area would result in a complete monopoly in all associated manufacture, sale, lease, maintenance and related auxiliary services. The Department of Justice's letter referred to above was cited in support of their position.

98. It was also urged that, since the allocation of microwave facilities is covered by Title III of the Act and competition rather than regulation is the "prevailing theme" of Title III, it would be contrary to the specific policies set forth in the Act for the Commission to refuse to grant private microwave authorizations because of the availability of common carrier facilities. For the Commission to follow such an "availability" doctrine would mean the grant of an exclusive franchise to the carriers and the Act does not give the Commis-

sion the power to grant such exclusive rights. Referring to sections 311, 313, and 314 of the Act, several of the private users took the position that there was a Congressional policy favoring competition and that any limitation such as suggested in Issue No. 9 would be contrary to the intent and purposes of those sections of the Communications Act. Apart from the alleged illegality, it was argued that to adopt an availability policy would place an onerous burden on private users because such policy would give the common carriers standing to intervene and protest every application which was filed by private users. This they claim, would permit the common carriers to force the private users to take the common carrier service or go into a time-consuming hearing. It was also suggested that the term "availability" is not an abstract proposition, but would involve matters such as costs and the time in which a common carrier would be permitted to construct facilities. Thus, it was claimed that to restrict or deny private systems would encourage "cream-skimming" by the common carriers in that the common carriers would supply service in areas where service can be supplied at a profit while failing to provide service in less lucrative areas. It was argued, therefore, that the public interest would not be served by adopting such a policy and thus it would be contrary to the provisions of Title III of the Act.

Issue No. 10. "To what extent will the contemplated private point-to-point communications systems depend upon interconnection with common carrier facilities?"

99. As a background to an understanding of this issue, it should be pointed out that there are two types of interconnections with telephone common carriers facilities involved:

a. With private line channels to bring the microwave system into a business headquarters, or some similar central location.

b. With general exchange and toll service facilities of the common carriers.

The Bell System Companies have a general policy of interconnecting their facilities with PBX facilities (switchboard and associated facilities furnished by the telephone companies which normally tie-in with their public communications system) but of not interconnecting with PAX facilities (switchboard and associated facilities furnished by private users). Bell states that they have limited the interconnections of their facilities with the facilities of others to situations where (1) service is required in remote, hazardous or inaccessible locations, or where it is otherwise impractible for the telephone company to provide the service or facilities, or (2) connection with a customer's own facilities is essential to national defense or to the general public safety and welfare. Under these two broad criteria, the Bell System companies state that they have made tariff offerings of private line channels to connect "right-of-way" and public safety microwave systems with telephone company PBX's from which they could be operated more effectively for the purpose

for which they were licensed. It was also indicated that Bell will connect its facilities with STL links and TV pickup facilities, and that they are considering extending their policy to provide interconnections with highway and turnpike systems.

100. In contrast to the Bell System, the independent telephone companies do and will provide circuits to connect private communications systems. They see no reason for such a policy as the Bell System follows. Similarly, Western Union has no objection to interconnection with private systems if such interconnection is an extension of a circuit from a private system over to some other point. It is clear from the record that, from a technical standpoint, interconnection of private systems with the common carrier systems is feasible where compatible and adequate transmission standards are maintained.

101. The private users are not united in their position as to whether their systems will depend upon interconnection with common carrier facilities. Generally, the right-of-way and safety organizations appeared to be interested only in continuing, as indicated above, the same type of interconnection they now have with the telephone companies. However, in the case of railroads, Bell System companies have permitted, for limited operational needs, interconnections of the railroads' wireline communications systems with the public landline telephone system for years. Recently, a conflict has developed and these telephone companies will not permit such interconnection if any portion of the railroad communications system is microwave. The railroads are desirous of having such interconnection but Bell claims that conditions have changed. In its brief, AT&T states that this matter is now under negotiation between the parties.

Issue No. 11. "What are the requirements for mobile operations of spectrum space above 890 Mc.? Should the band 890-940 be reserved for land mobile use?"

102. The majority of the private users who testified on this Issue were of the view that frequencies above 890 Mc. are usable for mobile operations although frequencies substantially below 890 Mc. are most suitable for such operations. Some of the parties urged the allocation of frequencies in the 890-940 Mc. band for such mobile operations. In this connection, Motorola presented evidence (including tape recordings) as to the feasibility of using microwave frequencies for such land mobile operations. Specifically, it suggested that mobile use be permitted in the 940-952 Mc. band and that the 1300-1320 Mc. band be also allocated for mobile operations. were conducted using the frequencies 900 and 930 megacycles in the Chicago, Illinois, area. Part of this test operation was conducted using land mobile stations, and part was conducted using aircraft stations. Motorola claimed that such tests showed that mobile operation in the microwave spectrum was feasible and that there was a need therefor.

103. The common carriers took the position that frequencies above 890 Mc. were not well-suited for land mobile use

but that they are acceptable for air-toground circuits. It was the position of the Bell companies that these frequencies are so valuable for point-to-point operations that they should not be diverted to mobile service. The police group also took the position that frequencies above 890 Mc. were not wellsuited for mobile operations. Collins Radio felt it would be illogical to remove point-to-point operations from the 890-960 Mc. band to accommodate the few geographical locations in which this band may be technically feasible for land mobile operations. ARINC, on the other hand, claimed that the frequencies above 890 Mc. were not suitable for air-toground operations because the airplanes move out of range too fast.

104. In addition to the land mobile operations, there was indicated in 'the hearing a need for continued allocation of frequencies in the bands above 890 Mc. for portable TV pickup operations.

Issue No. 12. "What are the require-

ments for ISM operations for spectrum space above 890 Mc.? May other uses of radio share the bands that might be used by such operations?"

105. The ISM group urged the retention of existing bands allocated for ISM uses, except that Raytheon and AIEE urged that such bands be broadened to provide for a bandwidth of plus or minus 2.65 percent of the center frequency, and that the band now centered on 18,000 Mc. be changed to center on 22,235 Mc., because of water absorption attenuation is much higher at this frequency and possibility of interference is greatly reduced. However, a witness for Lenkurt Electric Company urged that the band 890-940 Mc. be reallocated for common carrier fixed operations. He claimed that the needs of the ISM groups in this frequency range could be adequately provided for in the frequency band 890-900 Mc., or at most 890-920 Mc. General Electric argued that the allocation of adequate frequencies for ISM services is today more important to the growth of the economy and the general welfare than would be the allocation of the same space to any of the other services who have requested space now allocated to ISM. Particular stress was made for the continuation of allocations in the 890-940 Mc. band. Among the reasons given for this recommendation are:

a. The removal of any one of the remaining ISM allocations would create a serious gap in the distribution of these allocations.

b. As far as tube technology is concerned, there is every evidence that the limit of power capability of 1000 Mc. is at least 15 times higher than at 2500 Mc., or at least 125 times higher than at 5000 Mc.

c, The optimum frequencies for the heating of food and biological tissue lie in the vicinity of 1000 Mc.

106. The Society of the Plastics Industry stated that, although the 915 Mc. band is not now being used in the plastics industry, new equipment capable of inband operation will soon be available. It claimed that substitution of the 2450 Mc. band for the 915 Mc. band is not 33,000-33,300 33,300 33,330

feasible because depth of penetration of heating at 2450 Mc. is insufficient for many plastics. Further, it claimed that spectacular improvement in dielectric heating rate resulting from the use of 915 Mc. results in the opening of a number of new fields of great potential value to the plastics industry.

107. American Motors Corporation and Tappan Stove Company urged that the frequency band 2450 Mc. be retained for use for electronic ranges. They claimed that this latter band is better suited for such functions than the 915

Mc. band would be.

108. The American Medical Association urged the retention of the 2450 and 915 megacycle bands. They testified that many physicians today use microwave diathermy apparatus which operates on the frequency 2450 Mc. and that substantial therapeutic benefits would be denied patients if allocation of this band for such use is not continued. With respect to the 915 Mc. band, they claimed that there is theoretical evidence to indicate that this frequency may be beneficial and useful when utilized in medical diathermy equipment,

109. On the other hand, AT&T argued that the 915 Mc. band may be only slightly preferable to the 2450 Mc. band where considerable depth of penetration is required, but that it is not of sufficient magnitude to warrant allocating such band for those purposes as compared to the use of such frequencies which are necessary to render to the public better service on over-water and other difficult

point-to-point routes.

110. With respect to sharing between ISM and other users, the ISM group has no objection because other uses would not cause them any operational difficulties. However, all the others who testified, with the exception of the Petroleum group who believed that their operations could be accommodated on a secondary basis, emphasized that the interference from ISM operations would be intoler-

Issue No. 13. "What are the requirements for the radio navigation service for spectrum space above 890 Mc.?"

111. The principal testimony on this issue came from Raytheon which strongly urged that adequate frequency space above 890 Mc. was required for radionavigation services. In particular, they urged that a positive means of identification of vessels within radar ranges is required for safety purposes. They stated that a common radio calling frequency is a necessary adjunct of this requirement and that the present method of determining the relative position of another vessel is by shipboard radar but there is no way of completely identifying a particular ship on the radar display. They urged that, in addition to the developmental bands for maritime radionavigation, allocations be retained or made in the following ranges for such purposes:

Mc. Radar .	Mc. B	eac	on
3000-3246	3256	\pm	10
5460-5650	5450	+	10
9320-9500	9310	<u>-</u>	10
16,000–16,300	16,320	Ŧ	20
33.000-33.300	33.330	-	30

112. It was claimed that a large element of cost of radar equipment is in the magnetron tube but that that cost could be reduced if the tubes were made on a volume basis, and, in order to increase the volume, the Commission should permit, where feasible, different services that could use the same or similar tubes in the same or adjacent bands. It was suggested that the bands adjacent to the 5460-5650 Mc. radionavigation band should be allocated for air navigation use: thus, tubes of similar design could be used for two large volume purposes and the cost of each type of equipment reduced accordingly.

113. The petroleum group stated it has an important interest in the requirements of radionavigation above 890 Mc. Similiarly, the American Waterways Operators, Inc. and the police group also urged the allocation of frequencies for radionavigation purposes.

Issue No. 14. "What are the requirements for any potential users of spectrum space above 890 Mc. not otherwise encompassed in other issues herein set forth?"

114. No evidence was presented as to requirements for spectrum space above 890 Mc. which is not covered under other issues herein.

Issue No. 15. "Under what circumstances, if any, should private or common carrier fixed systems be authorized to operate on frequencies below 10,000 Mc. in terminal or metropolitan areas?"

115. The private users were in general agreement that there should be no limitations or restrictions on the use of frequencies below 10,000 Mc. in terminal or metropolitan areas. The railroad group suggested that the assignment of frequencies below 10,000 Mc. should be subject to an engineering showing that the new system will not cause harmful interference to an existing station. Many of the private users obviously predicated their testimony on the basis of the EIA study which concluded that there were adequate microwave frequencies available for private point-topoint systems for the foreseeable future. Of course, as indicated previously they stated that if congestion were to develop in terminal or metropolitan areas, then frequencies above 10,000 Mc. should be used in such areas. Some of the private users took the position that frequencies below 10,000 Mc. should be used only when terminating long-haul (intercity) systems in such areas and that intracity operations should be limited to operation on frequencies above 10,000 Mc. The National Retail Dry Goods Association stated that its requirements could be met by the assignment of frequencies above 10,000 Mc. Requiring intracity operations in frequencies above 10,000 Mc. was specifically opposed by the fire service group. The police group stated that they should be allowed to operate on frequencies below 10,000 Mc. if no interference is caused to any other user.

116. The common carriers prefer to use the frequencies below 10,000 Mc. now allocated for their intercity circuits in terminal and metropolitan areas. However, it was testified that frequencies above 10,000 Mc. could be used for terminal operations of their intercity systems in those areas where congestion develops, but that it would cost considerably more and suitable equipment would have to be developed.

Issue No. 16. "Should the Commission authorize the use of a system which occupies a broad band of frequencies in those cases in which a licensee has requirements for only a portion of the number of channels which can be accommodated in the same amount of space? Is there a requirement for

narrow band equipment?"

117. The terms "broad band" and "narrow band" were not defined in the issue herein. Consequently, it is not always clear in the record as to the meaning thereof in the context of given testimony. While the finite limits of broad versus narrow band have not been determined, it is generally considered that any microwave system which operates within a bandwidth of 500 kc. or less is a narrow band system. Broad band systems, on the other hand, require a minimum bandwidth of 3 Mc. In the 6,000 Mc. band, American Telephone & Telegraph's TH microwave system now uses channels 32 Mc. wide. However, EIA states that there is not a direct relationship between the number of voice channels and the RF bandwidth required. Other factors which must be considered are signal-to-noise ratio, the method of modulation or multiplexing, and the transmitter power.

118. Most of the so-called narrow band microwave operation, as defined above, is in the 952-960 Mc. band, with a small amount in the 890-940 Mc. band.

119. At the present time, low capacity microwave equipment may be obtained which will handle on the average 2-6 voice channels; medium capacity microwave equipment will handle up to a hundred voice channels; and high capacity microwave equipment will handle hundreds of voice channels or a video signal. Such low capacity equipment is used for operation in the 890-960 Mc. band, and the medium and high capacity equipments operate in the higher microwave bands.

120. In general, it was the consensus that there is a need for both broad and narrow band operation. The common carriers contended that it would not be desirable to restrict the bandwidth licensed to a common carrier nor require that the authorized bandwidth be used to maximum capacity at time of installation. The National Mobile Radio System urged that broadband assignments be made on a case-by-case basis upon a showing of need therefor. Substantially the same point was made by the railroad, police, petroleum, and the utilities groups. ARINC urged that microwave systems should be grouped into three categories, viz., (1) very broad (television); (2) broad band (telephone); and (3) narrow band (telegraph). They felt that if a user has a limited requirement his application should be for a narrow band system, whereas if the channel capacity is very high it should be for a broadband system, so that the spectrum space would be economically allocated to

each. The record does not elaborate, however, as to the practical application of such an allocation theory where an applicant proposes a system which will utilize combinations of television, telephone and telegraph channels.

Issue No. 17. "Should common en-

gineering standards be established for all point-to-point microwave equipment and, if so, what should they be?

121. The Bell System witnesses took the position that standards might be helpful but were not essential. They stated that they have satisfactorily shared the same frequency bands with Western Union on the basis of coordinated case-by-case planning of systems. They claimed that no efforts have been made to make all the equipment alike and that standardizing of equipment would result in undesirable inflexibility. They urged that there would be a more efficient frequency spectrum usage by cooperative arrangements than by adopting standards. They admitted that their experience was limited to cooperative arrangements with other common carriers and had no experience in coordinating where extensive licensing of private systems were involved. It was admitted that frequency pairing would be essential in any given area where saturation occurs.

122. The private users were not uniform as to their views on this issue. Westinghouse desired standard engineering procedures for all private systems but felt that different standards should apply to common carriers unless there was interconnection between carriers and the private users. Common engineering standards for all equipment were favored by the forestry group, the National Mobile Radio System, and the Association of American Railroads. The latter suggested that they be kept to the minimum. The police group wanted engineering standards that are common for the use to be made of the microwave system, and the NCUR wanted uniform standards for frequency stability, beam width, propagation, etc. for all point-topoint microwave equipment. The API contended that common engineering standards are not needed, but that standards could be developed so as to provide for best operation for both types of systems.

123. EIA took the position that it would be impractical to have across-theboard common engineering standards which would cover common carrier as well as private microwave communications systems; however, certain minimum common engineering standards for private systems directed to prevention of interference would be desirable. The Association included, in its Exhibit 20, certain technical standards for private systems. The standards cover such criteria as separation in miles between stations, orientation and size of antenna, power necessary for good signal-to-noise ratio, allowable co-channel and adjacent channel and distant channel interference levels, receiver bandwidth, frequency tolerance, etc., for each band 890 Mc. through 12,700 Mc.

Issue No. 18. 124. It was the general consensus that there should be little or

no limitations or restrictions placed upon the use of frequencies above 30,000 Mc. The forestry group, however, urged that some restriction should be placed on those frequencies to protect national defense agencies. While there was indicated no present use of that spectrum space, some laboratory experimentation is being conducted. It was recommended by some that authorizations in such bands be made on a developmental basis. Raytheon, however, urged that frequency bands above 33,000 Mc. should be reserved for high resolution radar, primarily for marine and anti-collision purposes. Specifically, it recommended that frequencies in the bands 33,000-33,300 Mc. be made available for marine radar operations and 33,300 Mc., plus or minus 30 Mc., be made available for marine beacon operations.

Issue No. 19. "To what extent, if any, should the bands of frequencies for fixed operations above 890 Mc. be shared by common carriers and private users?"

125. With minor exceptions, both the common carriers and the private users urged that there should be no sharing of microwave frequencies by common carriers and private users. AT&T took the position that such sharing would result in a wasteful, partial use of such frequencies in many cases; that it would block the development of broad band common carrier system designed to handle a much greater volume of communications. In particular, it was emphasized by AT&T that sharing with ISM would be virtually impossible.

CONCLUSIONS

1. As indicated previously, this investigatory proceeding was designed to obtain information which would help the Commission to establish policies and formulate rules and regulations covering the use of frequencies in the bands above 890 Mc. As shown above, specific and complete factual data were not obtained with respect to the needs and demands for frequencies in all cases. However, such proceeding nevertheless did accomplish its purpose to a considerable extent in obtaining useful and helpful data, principally with respect to the frequency bands below 10,000 Mc. Limited operational data concerning the use of frequencies in the bands above 10,000 Mc. are available.

2. This proceeding contemplated that rule change proposals would be forthcoming as a result of the data obtained herein. Subsequent to the close of the record herein, several rule-making proposals involving frequencies above 890 Mc. have been promulgated, some of which have been based in whole or in part on the data obtained in this proceeding. Some have been finalized, certain others remain pending (see Dockets 12404 and 12263), and other rule changes may be proposed in the future. The finalized rule changes are set forth in paragraphs 7-9 above, and, to the extent indicated therein, are dispositive of the requests made herein for such

frequencies.

3. It should be reiterated that, because of the investigatory nature of this proceeding, definitive findings and conclu-

sions as to each issue are neither contemplated nor required in this Report and Order. Thus, to the extent that policy determinations made herein require implementation, rule-making procedures will be forthcoming as soon as practicable. In some cases however, it appears that such rule-making action should be withheld until after the conclusion of the forthcoming International Radio Conference to be held this summer.

4. It appears to us that there are two broad over-all policy questions to be determined herein. The first such question relates to the adequacy of the supply of microwave frequencies and the terms and the extent to which radio station authorizations may be made to private users. Related thereto, of course, are such questions as sharing by private users or between common carriers and private users, needs for interconnection with common carrier facilities, benefits which may accrue to the public, etc. The second question, and certainly not secondary in importance, relates, in broad terms, to the responsibility and obligation of this Commission under the Communications Act of 1934, as amended, to consider the economic effects the licensing of private point-topoint communications systems would have on the common carriers, the users of common carrier service, and the general public.

5. We turn first to the question of adequacy of frequencies. The studies of EIA as to available frequency space, while admittedly somewhat theoretical and subject to some possible limitation in the implementation thereof because of site and zoning problems, demonstrate that there is considerable use potential for private point-to-point systems in the now-allocated operational fixed and other microwave frequency bands. This appears to be true even under EIA's Step 1 procedure, arbitrarily setting an area protection for each station, which area undoubtedly will be much smaller when systems are engineered in. It is apparent that, while there may now be adequate frequencies for assignment in open country areas, and, while site availability may be a limiting factor, the evidence does not indicate that this limitation now has substantial significance. Insofar as the terminal metropolitan areas are concerned, it appears that very little use is now being made of frequencies above 890 Mc. for private point-to-point operations. In fact, as indicated above, Los Angeles, with 38 private microwave stations at or about the time of the oral hearing herein, has the greatest number, with the New York-Northeastern New Jersey area having only three such stations and the Chicago, Ill., area having only two such systems. By and large, the principal use now made of microwave by the private users, exclusive of television broadcasters, is for point-to-point operations in the open country areas by the so-called right-of-way companies; state and local governmental agencies in connection with police, fire, and highway maintenance activities; and for control and repeater operations generally in or near urban areas. The latter oper-

ations essentially involve only one voice channel and very narrow bandwidth. While the above-described limited use may be due primarily to the restrictions in the existing rules, the studies made by the EIA as to future expansion, referred to above, indicate that it is not probable that there will be a frequency shortage in the reasonable future in such areas. One practical deterrent to private users will be the economic factor as reflected in the cost of establishing such systems. On the basis of the record in this proceeding, we are of the view that there are now available adequate frequencies above 890 Mc. to take care of the present and reasonably foreseeable future needs of both the common carriers and private users for point-to-point communications systems, provided that orderly and systematic procedures and technical criteria are applied in the issuance of such authorizations, and that implementation is consistently achieved with respect to all available and future improvements in the art. This is not to say, however, that there are unlimited frequencies available or that future conditions may not require that limitations and restrictions be placed upon such authorizations and operations if frequency congestion does develop. We propose, therefore, to watch this matter carefully and, if future conditions so indicate, to take whatever corrective action may be deemed appropriate at that time.

6. The record demonstrates that frequencies above 10,000 Mc. are suitable for intracity or local area operations. For the most part, such operations involve relatively short distances, for which these frequencies are eminently suitable. Thus, as a general principle, it will be expected that all intracity or local area operations should be conducted on frequencies above 10,000 Mc. So far as the private services (excluding broadcasters) are concerned, therefore, we are of the view that, except for public safety organizations and control-repeater operations, consistency with this general premise requires that authorizations for future private point-to-point systems for intracity or local area operations be granted on frequencies above 10,000 Mc. It appears that the largest demand for such intracity or local area operations may occur in the Business and Citizens Radio Services. For this reason, and in view of the open-ended provisions for eligibility in the latter services, authorizations for point-to-point operations in the Business Radio Service will be made using frequencies above 10,000 Mc. only, and in the Citizens Radio Service in the bands 16,000 Mc. and above. The Commission's records show that there is available and now in use equipment which will operate in the bands 10,000-13.000 Mc. While it appears that some improvements may be required in such equipments, it is expected that this should not prevent the utilization of such frequencies in the reasonably immediate future. As to the availability of equipment for operation in the higher frequency bands, it appears that there has been some experimentation in the development of such equipment, and the

record herein indicates that it is not unreasonable to expect that such equipment may be available within the reasonable future. Thus, it appears that equipment considerations should not be considered as sufficient basis for departing from our determination to require such private operations to use frequencies above 10,000 Mc.

7. In view of the foregoing, we are of the opinion that the frequencies now allocated for operational fixed operations should be made assignable on a regular basis to private users on the same eligibility basis as is now provided for mobile operations in the several Safety and Special Radio Services. However, the issuance of a license for point-to-point operations will not be contingent upon such person being also licensed for mobile operations. In view of our determination as to availability of frequency space and because of the impracticability of enforcement, we believe that the public interest would not be served by restricting such use to operational traffic to the exclusion of administrative traffic.

8. With respect to common carriers, the record shows extensive use at the present time in the 3700-4200 Mc. band by the common carriers and Bell System witnesses testified that in five major cities they are approaching saturation on such frequencies. The Bell System is also using frequencies in the 5925-6425 Mc. band, and it expects that such band will be saturated within 10 to 15 years. However, a Bell System witness admitted that there was no city at the present time where additional usage could not be obtained by certain technical modifications or improvements, such as improvements in antennas. It should be noted, in this connection, that authorizations on a regular basis have been issued to common carriers for the use of these frequencies for the past several years. While continued growth may be anticipated, it is expected that technical improvements which can and will be effected will provide for improved and additional usage. Very little usage of the band 10,700-11,700 Mc. is now being made by the common carriers, and, although the bands 16,000-18,000 and 26,000-30,000 megacycles are now available to common carriers on a regular basis, there have been no authorizations issued in the latter bands inasmuch as equipment has not yet been developed. It is clear from the record that there is no immediate problem of frequency

congestion in the open country areas and if substantial and serious frequency congestion were to occur in terminal areas in the frequency bands 3700-4200 and 5925-6425 megacycles, the carriers could utilize frequencies in the bands above 10,000 Mc. when suitable equipment is developed and becomes available. In view of the Commission's reallocation of the frequency band 3500-3700 Mc. to Government and Amateur services (See Paragraph 7a(6) of Preliminary Statement above), it is not possible to enlarge the limits of the present common carrier band at 3700-4200 Mc. On the basis of the record herein, we are of the opinion that enlargement of the frequency bands 5925-6425 Mc. and 10,700-11,700 Mc. for common carrier fixed point-to-point operations, as requested, is not warranted at this time.

9. With respect to technical standards, it should be noted that authorizations to common carriers are now being granted pursuant to the provisions of Part 21 of the Commission's rules and regulations and the technical criteria set forth therein. Similarly, Part 4 contains the terms and conditions under which microwave frequencies may be utilized for intercity TV and STL links. No changes in such criteria are being proposed herein. As to the private users (excluding broadcasters), we are of the view that common engineering standards should not now be established for all point-to-point microwave equipment. Nevertheless, it is evident that some basic minimum standards and criteria should be established for private pointto-point operations (exclusive of broadcasters) as soon as possible in order to provide for the most effective operations consistent with administrative processes. This, however, is a matter for rulemaking proceedings.

10. We are of the view that frequencies in the bands above 890 Mc. should not, as a general rule, be shared by common carriers and private users. Apart from the administrative problems involved, the record is clear that there are basic differences in standards and quality of service between the common carriers and private users. In general, the common carriers indicated that they must have a uniformly high quality service so that they can furnish the several different kinds of service which they are required to provide. The private users, in turn, stated that their operational requirements can be met with service of lesser quality. Also, the common carriers generally utilize a wide band operation as contrasted to narrow band operation used by most private users. It should be noted, however, that all the Operational Fixed bands are now shared by International Control, but that there is very limited use by the latter. Further, as indicated above, the Commission, in Docket No. 12671. amended its rules to permit operation in the frequency band 2110-2200 Mc. by stations in the International Fixed Public Radiocommunication Service in the State of Florida south of 25 degrees 30 minutes north latitude. Also, in its Fifth Report and Order in Docket 12404, the Commission amended its rules to

permit sharing in the bands 942-952 and 2110-2200 megacycles. Further, some sharing has been permitted in Puerto Rico and the Virgin Islands (see paragraph 7(g), page 6). However, apart from these situations, it does not seem advisable to permit sharing between common carriers and private users.

11. Issue 16 relates to the merits of the assignment of a wide band of frequencies under circumstances where usage of only a portion of the band may be anticipated. As indicated above, the common carriers generally use and require a wide band of frequencies for their operations in order to meet the needs for different types of service which they provide. Insofar as private users are concerned, a considerable variation of need may occur. It seems self-evident that the public interest would not be served by the grant of a broad band of frequencies where the applicant obviously has need only for a narrow band of frequencies. On the other hand, it is recognized that provision should be made to permit reasonable future expansions. Therefore, each application for private point-to-point systems must furnish complete and specific facts showing the use proposed to be made and the frequency space required for the proposed operations. A broad band of frequencies will not be granted where it appears that only one or two voice channels are required. Thus, in the case of controlrepeater operations, it appears that frequencies in the band 952-960 Mc. are more suitable than other higher microwave bands for such control-repeater operations where narrow band operation is involved. It will be expected, therefore, that the band 952-960 Mc. will be utilized for such purposes.

12. We have carefully considered the requests by some of the private users for authority to share frequencies on a cooperative, non-profit, cost-sharing basis with similar users in the same service. While it is recognized that such use may, in some cases, result in a better and more effective utilization of frequencies, this argument is, at least, equally persuasive in support of a conclusion that service should be afforded by communication common carriers. Further, although such an arrangement may make it economically feasible for smaller firms and organizations to utilize microwave for their operations, it must be observed that such shared usage is inconsistent with one of the principal justifications urged by private users for their own systems, viz., exclusive control of their own facilities because of special communications problems. Finally, we have some concern with the fact that creation of extensive point-to-point cooperative facilities may lead to undesirable situations where the cooperatives have many of the attributes of communication common carriers without assuming the responsibilities of service and the burdens of regulation which apply to common carriers. Accordingly, on the basis of the record herein, it does not appear, at this time, that the public interest would be served by generally authorizing such cooperative arrangements for private point-to-point microwave

cIt is quite probable that future technological developments may make it possible to double the use of frequencies in this band. See testimony of Harvey J. McMains, employed by Southwestern Bell Telephone Co. as Chief Engineer for the State of Oklahoma, Docket No. 12570, In re applications of Central Freight Lines, Inc. for Authorizations in the Motor Carrier Radio Service at Dallas and Fort Worth, Texas, page 8, wherein he stated: "The TD-2 system [between Dallas, Texas and Fort Worth, Texas] is presently capable of providing six broadband channels in each direction. Newly developed techniques presently under trial are expected to enable the expansion of the capacity of these TD-2 facilities to 12 broadband channels as needs develop."

systems. Consequently, except for (1) persons eligible for authorizations in the Police, Fire, Highway Maintenance, Forestry Conservation, and Local Government Radio Services, (2) the so-called right-of-way companies, like pipelines and railroads, and (3) other organizations whose rates and charges are regulated by a governmental entity, authorizations will not be issued for the cooperative use of private microwave systems. The justification for these exceptions is two-fold. First, the number of cases involved in this limitation appears to be sufficiently reasonable to afford us a good basis upon which to make meaningful observations as to the desirability and impact of such arrangements. Second, it is evident that any economic benefits flowing out of such arrangements will assuredly flow directly back to the public, either as taxpayers or rate-payers.

13. With respect to the use of frequencies above 30,000 Mc., the record shows that there has been, to date, only very limited study or experimentation in those frequency bands, and very little data are now available concerning these frequencies. Under the circumstances, it does not seem that there is a basis for any generalized restrictions on the use of such frequencies at this time. Accordingly, any grants for such authorizations will be made on a developmental basis.

14. As previously indicated, the testimony concerning the extent to which private systems will depend upon interconnection with common carrier facilities ranged from the position of the trucking organizations that interconnection was absolutely essential for their operations to those parties who stated that their proposed operations would require no interconnection. The record is not clear in all cases as to the type of interconnection desired or required, i.e., whether the private user desires interconnection with the public landline telephone system or whether such connection is with private line channels to bring the microwave system into a business headquarters, or some central location. As previously noted, unrestricted interconnection is generally permitted by the independent telephone companies. The Bell System companies, on the other hand, permit interconnection of the general exchange facilities with private systems in only limited instances where, according to Bell System witnesses, considerations of safety of life and property are involved, and, under certain circumstances, with right-of-way companies. It is not possible or appropriate, within the framework of the issues in this proceeding, to establish standards or criteria applicable to all situations where interconnection of private systems with common carrier facilities may be desired. Generally speaking, these are matters which are governed by tariff regulations and practices which are required to meet the statutory tests of justness and reasonableness.7 Such tests can only be applied on the basis of facts involved in a particular case and in accordance with specific procedures established for the regulatory administration and review of tariffs. Moreover, resolution of the interconnection question may involve different regulatory jurisdictions, i.e., local, State or Federal depending upon the nature of the particular case involved.

15. As a general principle, it is not considered feasible for the fixed and mobile services to share frequencies. The reasons are readily apparent. Fixed installations require engineering as to locations, directivities, and frequency sharing, while mobile installations move about and cannot be engineered to fit a particular area. Thus, it appears appropriate to consider the reallocation of the bands 6425-6575, 10,550-10,700 and 11,700-12,200 megacycles as indicated below. These bands are now allocated jointly to private and common carrier operations. They have been available on a limited developmental basis for the former operations and on a regular basis for the latter operations. Little use has been made of the 6425-6575 Mc. band by private radio systems, whereas the common carriers have used the band extensively for several years providing a variety of such public services for which the demand is increasing. Therefore, we are of the view that it would be in the public interest to propose for allocation the above-mentioned bands as follows:

a. 6425-6525 and 11.700-12.200 megacycle bands to common carrier mobile. This would include any type of mobile service to be rendered by the common carriers, including video pickup for broadcasters, closed loop TV, aeronautical or maritime public correspondence. etc.

b. 6525-6575 and 10,550-10,700 megacycle bands for non-common carrier mobile such as police "stake outs", etc. These would not be available to broadcast licensees for auxiliary broadcast

It should be noted that the common carriers would be permitted, among other things, to render broadcast TV-Pickup service in the common carrier mobile bands thereby enhancing their ability to serve all members of the public and easing the operational difficulties they have heretofore encountered because of limitations as to their access to frequencies allocated for TV Pickup service for broadçasters. Frequency allocations actions, as described above, will maintain the desired segregation of private and common carrier operations. However, such allocations proceedings will not be taken until after the International Radio Conference to be held this summer. We do not consider it practicable to establish microwave frequency allocations above 890 Mc. for the more commonplace type of vehicular radiotelephone land mobile operations since it is considered more practical to place such operations in the lower parts of the spectrum.

16. Also, it would seem that the use of omnidirectional antenna systems would substantially curtail the use which may be made of microwave frequencies because a frequency used in such a system could not be used in the same area by any other licensee. This is in contrast to the basic philosophy herein that a substantial number of frequency assignments can be made in each area because of the fact that microwave systems with very narrow beamwidth are feasible and practicable, thereby making it possible to assign the same frequency to several parties in the same area. However, it appears that there may be some need for omnidirectional antenna systems, by public safety organizations such as police and fire departments. Since it appears that such usage would be confined principally to intracity areas, we believe that frequencies above 16,000 Mc. could be utilized for such operations. Accordingly, authorizations for such systems will be made using frequencies in the bands above 16,000 Mc. only. Applications for such systems will be considered on a case-by-case basis, tional and unique circumstances re-

and authorizations therefor will be issued only upon a complete and specific factual showing by applicants of excepquiring the use of such systems.

17. There is also the question as to whether provision should be made for tropospheric forward scatter in the bands above 890 Mc. While one witness claimed that forward scatter systems could occupy the same frequency bands as conventional line-of-sight microwave systems, virtually all the other witnesses who testified on this point claimed that both systems generally could not occupy the same bands. We are persuaded that such joint occupancy generally would not be practicable. Accordingly, as a general principle, we will not issue authorizations for forward scatter systems between points within the continental limits of the United States, excluding Alaska, using frequencies above 890 Mc. In those cases where it can be shown by the applicant that there is no reasonable likelihood of harmful interference to conventional line-of-sight systems or to other operations which are in accordance with the rules and regulations of the Commission, scatter communications systems may be authorized for communication with points outside of the continental limits of the United States with which it is not feasible to communicate via conventional line-of-sight microwave systems.

18. In view of the Commission's determination that there should not be sharing between common carriers and private users of point-to-point systems, there remains the question of the allocation of the bands 16,000 to 18,000 Mc. and 26,000 to 30,000 Mc. which are now allocated for fixed and mobile operations. This is a matter now being considered in Docket No. 12404 and need not be resolved herein.

19. There are certain requests for frequencies which require international coordination and allocation, and, therefore. action on such requests will be deferred until the completion of the forthcoming International Radio Conference this summer. Except for (e) below, the Commission has proposed such allocations, both nationally and internationally, in Dockets 12404 and 12263,

⁷ Cf. Docket No. 8963, In the Matter of American Telephone and Telegraph Company, et al., Charges and regulations for television transmission services and facilities, 5 Pike & Fischer RR 639, 672a-672d (1949).

respectively. These requests are as follows:

a. The requests of the National Science Foundation, Associated Universities, Inc. and EIA for frequencies at 1400 to 1427 Mc. for radio-astronomy.

b. The request of Aeronautical Radio, Inc. for 40 Mc. near 1600 Mc.; 100 Mc. near 3000 Mc.; 150 Mc. near 4500 Mc.; 300 Mc. near 9000 Mc.; and for 400 Mc. between 13,000 and 26,000 Mc. for Aeronautical Proximity Warning Indicators and Collision Avoidance Systems.

c. The request of Raytheon for radionavigation bands as follows: (1) 16.000-16,340 megacycles with Racon band at 16,300 to 16,340, and (2) 33,000-33,360 megacycles with Racon band at 33,300

to 33,360 megacycles.

d. The request of ARINC for frequencies in the Aeronautical Radionavigation bands near 13,000 Mc. wherein two 250 Mc. bands are requested, another band of 250 Mc. between 15,000 and 16,000 Mc. and the 24,000 Mc. band wherein an unspecified bandwidth of frequencies is requested.

e. The requests of EIA and Raytheon for the widening of the ISM bands at 2450 Mc. and 5850 Mc. and also changing the 18,000 Mc. ISM band to 22,235 Mc. and widening the band. However, the Commission has proposed in Docket 12404 to move the 18,000 Mc. band to

22,235 Mc. plus or minus 25 Mc.

20. We turn then to the second broad question in this proceeding, namely, whether the Commission as a matter of law is required to, or otherwise as a matter of policy should, protect the users of common carrier service from any adverse economic effects that such carriers might suffer from the operation of private point-to-point systems. Generally, this question encompasses the matters raised in Issues Nos. 6 through 9 of this proceeding. It is abundantly clear that there is no express obligation on the part of the Commission under the Communications Act of 1934, as amended, to protect the users of common carrier service from any adverse economic effects that the carriers might suffer in that connection. There is no basis in the record of the instant proceeding upon which the Commission could generally conclude that substantially adverse economic effects would flow from the licensing of private point-to-point systems as proposed herein. While the common carriers have claimed that there will be an adverse economic effect, they did not disclose the detailed basis and extent of such effect so as to enable appropriate evaluation of their claim. Thus, the record is inconclusive on the question as to the specific nature, extent and magnitude of any detriment which the licensing of private point-to-point systems would have on the ability of common carriers to serve the general public. The only specific data which were furnished in this proceeding responsive to this issue was the study made by Motorola which indicated that, considering what they termed the maximum possible usage by private users by 1976. the total revenues of the Bell System Companies would be reduced by less than 3 percent. This figure, of course, included the revenue loss which is attrib-

uted to right-of-way companies, which was estimated by one of the private users to be about one-half of the 3 percent. It is to be noted that no studies were made by the private users as to the effect of unrestricted licensing upon Western Union or the independent telephone companies. It must also be observed that none of the common carriers made any specific showing as to what effect unrestricted licensing would have upon their ability to serve the general public. Such showings as were made were generalized statements to the effect that such licensing would seriously and adversely affect their ability to serve the general public.

21. In view of the absence of a showing of a reasonable likelihood that adverse economic effects would result from the licensing of private point-to-point communications systems, as proposed, it is unnecessary to consider whether such licensing is contrary to the public interest. A finding on adverse economic effects cannot be based upon a speculative possibility of future adverse effects. Of course, this matter requires continued surveillance, and, if future conditions warrant, appropriate consideration will then be given to the problem. It is our responsibility under the Act to encourage the larger and more effective use of radio in the public interest. As was indicated by the Supreme Court of the United States in the so-called "Three Circuits" case, F.C.C. v. RCA Communications, Inc., 346 U.S. 86 (1953), the touchstone of the Communications Act is not the fostering of competition per se, but rather that course which will best serve the public interest, convenience and necessity. In the application of these criteria, certainly, competition would be one, but not the sole, factor to be considered.

22. It may be noted in passing that the Commission, in the past, has licensed television broadcasters to operate their own microwave relay facilities for temporary periods until common carrier facilities became available (See the Commission's Report in Docket No. 6651, adopted February 20, 1948, Mimeo FCC 48-481).8 Such a policy determination that the broadcasters look to common carriers for intercity relay of television programs was predicated upon public interest considerations arising from the Commission's belief at that time that there was not sufficient frequency space between 1000 and 13,000 Mc. in the non-Government fixed and mobile bands to accommodate private relay systems. However, as indicated previously, on the basis of the record herein, we are of the opinion that the public interest would not be served by a policy of restricting or denying the licensing of private pointto-point systems solely because common carrier facilities are available or may become available in the reasonable future. It follows that the Commission should not consider the availability of common carrier facilities as a condition of eligibility for private users.

23. Having determined that we will not restrict the licensing of private point-topoint communications systems, except as noted above, it is, therefore, unnecessary to consider the question as to whether such restrictions would result in a lessening of competition or a factoring of monopoly in the manufacture, sale, use or provision of communications facilities

contrary to the public interest.

24. In summary, we reiterate that, in arriving at the policy determinations herein, we have carefully considered the evidence adduced in this proceeding under each of the 19 specific issues. While it is obviously impossible to predict with absolute certainty that there will not be some frequency congestion problems in the future, as indicated previously, the record supports the conclusion that there are adequate frequencies to take care of the needs of the common carriers and the private users at this time and in the reasonably foreseeable future provided that orderly and systematic procedures and technical criteria are applied in the issuance of authorizations. It appears that any limitations on the use of such frequencies may stem primarily from site and zoning considerations in metropolitan areas, but on the basis of the record herein we are unable to determine that such considerations will have any substantial or material effect. Absent a shortage of frequencies, and in the absence of any showing of reasonable likelihood that expanded eligibility for private point-to-point microwave systems would adversely affect the ability of the common carriers to provide a nationwide communications service or to serve the general public, it does not appear that the Commission would be warranted in refusing to authorize private users to use microwave frequencies for point-to-point operations. Such a conclusion is consistent with the action of the Commission in the General Mobile Hearing in Dockets Nos. 8658, et al., wherein provision was made for authorizations for private mobile systems even though they were in direct competition with the common carriers. Of course, the frequency allocations in that proceeding were predicated upon the fact that there was a shortage of frequencies, a situation quite unlike that prevailing here.

25. The record supports the determination that there is a need for private point-to-point systems. In many cases, the operation of the private users is such that it is not convenient or practicable for common carriers to provide such service (e.g., remote or isolated business operations). In this connection, it may be observed that certain of the private users now licensed endeavored to get the common carriers to provide such service initially and constructed their private systems only when the carriers refused to do so. Even in areas where common carrier facilities and personnel are readily available, there appears to be a need for

^{*}Such policy was incorporated in Part 4 of the Commission's rules. In a recent Report in Docket No. 11164, in the Matter of Amendment of Part 4 of The Commission's Rules and Regulations Governing Television Auxiliary Broadcast Stations (Mimeo FCC 58-781), the Commission modified such rules to give television broadcast station licensees the option of operating their own intercity relay facilities or obtaining such service from common carriers regardless of availability of common carrier service.

private systems. In the first place, the private users do not require, in all cases, the high quality of service provided by the carriers to meet the varied needs of the public. Also, such private systems would provide for better control and flexibility for meeting their own hourby-hour operational and administrative needs.

26. At the present time, under current policies, only a limited use is being made of microwave frequencies. It is our view that provision for expanded eligibility will provide for more effective frequency utilization. On the other hand, we be-lieve that there are certain factors or conditions which will operate as practical deterrents to private users in establishing their own systems. The first, and perhaps primary deterrent, is the cost involved in establishing such systems. Another control is that the tariff regulations of certain common carriers will operate as a limiting factor, particularly in cases where a private system is established and efforts are made to obtain interconnection with a carrier where common carrier facilities are available and the carrier would be compelled to "short-haul" itself.

27. There is yet another consideration which impels us to our determination. We feel that the expanded eligibility will afford a competitive spur in the manufacturing of equipment and in the development of the communications art.

28. Although the present microwave fixed bands will permit a large degree of increased occupancy and congestion in the foreseeable future appears unlikely, the long range future of these bands should be considered. Past history has shown that, as higher and higher frequencies in the radio spectrum become usable for communications, the fixed service is gradually forced upward to make way on the lower frequencies for the mobile service which is continuously expanding. It is possible that insatiable mobile needs, including those for space communications and possible unknown requirements, may force the fixed services to move higher in the spectrum as the state of the art permits. Eventually, many fixed users may find it more convenient and/or economical to convert to non-radio communications methods such as coaxial cable or other wire line techniques, or may be forced to vacate frequencies required for important services which cannot, as a matter of fact, use non-radio communications facilities.

29. As we have indicated above, this investigatory proceeding was initiated for the purpose of obtaining data concerning the specific issues enumerated herein and it was expected that specific rule-making proposals would follow therefrom. This has been done in some cases, and it may be expected that other rule-making proposals of implementing the policies and determinations made herein will follow as soon as practicable.

Accordingly, it is ordered, This 29th day of July 1959, that the investigation in

this proceeding is concluded, and the proceeding itself is terminated.

make a finding that a grant of the application would serve the public interest,

Released: August 6, 1959.

Federal Communications Commission,

[SEAL]

Mary Jane Morris, Secretary.

[F.R. Doc. 59-6605; Filed, Aug. 10, 1959; 8:49 a.m.]

[Docket No. 12940; FCC 59M-1007]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Order Scheduling Prehearing Conference

In the matter of American Telephone and Telegraph Company, Docket No. 12940; regulations relating to connections of telephone company facilities with certain facilities of customers.

It is ordered, This 5th day of August 1959, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of \$1.111 of the Commission's rules at 10:00 o'clock a.m., September 24, 1959, in the Commission's offices, Washington, D.C.

Released: August 6, 1959.

Federal Communications Commission.

[SEAL]

Mary Jane Morris, Secretary.

[F.R. Doc. 59-6608; Filed, Aug. 10, 1959; 8:50 a.m.]

[Docket No. 13148; FCC 59-865]

BLOOM RADIO (WHLM)

Order Designating Application for Hearing on Stated Issues

In re application of Harry L. Magee, tr/as Bloom Radio (WHLM), Bloomsburg, Pennsylvania, Docket No. 13148, File No. BP-12002, has 550kc, 500w, DA-2, U, requests 550kc, 1kw, DA-2, U; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 5th day of August 1959;

The Commission having under consideration the above captioned and described application;

It appearing, that, except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal;

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated July 9, 1959, and incorporated herein by reference, notified the applicant, and any other known parties in interest, of the grounds and reasons for the Commission's inability to

make a finding that a grant of the application would serve the public interest, convenience and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the applicant filed a timely reply to the aforementioned letter, which reply has not, however, entirely eliminated the grounds and reasons precluding a grant of the application and requiring a hearing on the particular issues hereinafter specified; and in which the applicant stated that he would appear at a hearing on the instant application; and

It further appearing, that, after consideration of the foregoing and the applicant's reply, the Commission is still unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity; and is of the opinion that the application must be designated for hearing on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WHLM and the availability of other primary service to such areas and populations.

2. To determine whether the instant proposal of WHLM would involve objectionable interference with Stations WFIL, Philadelphia, Pennsylvania and WSVA, Harrisonburg, Virginia, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

3. To determine whether interference received from WFIL or any other existing standard broadcast stations would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of WHLM, in contravention of § 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That, Triangle Publications, Inc., and Shenandoah Valley Broadcasting, Inc., licensees of Stations WFIL and WSVA, respectively, are made parties to the proceeding.

It is further ordered, That to avail themselves of the opportunity to be heard, the applicant and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and pre-

^o See F.R. Docs. 59-6303, 59-6604 in Proposed Rule Making section, supra.

sent evidence on the issues specified in this order.

Released: August 6, 1959.

FEDERAL COMMUNICATIONS COMMISSION, MARY JANE MORRIS. Secretary.

[F. R. Doc. 59-6609; Filed Aug. 10, 1959; 8:50 a.m.]

[Docket Nos. 12865, 12866; FCC 59M-1003]

CHRONICLE PUBLISHING CO. (KRON-TV) AND AMERICAN BROADCAST-ING-PARAMOUNT THEATRES, INC. (KGO-TV)

Memorandum Opinion and Order **Continuing Hearing**

In re applications of Chronicle Publishing Company (KRON-TV), San Francisco, California, Docket No. 12865, File No. BPCT-2168; American Broad-casting-Paramount Theatres, Inc. (KGO-TV), San Francisco, California, Docket No. 12866, File No. BPCT-2401; for construction permits to increase antenna height.

At a prehearing conference in this proceeding held in Washington, D.C., on July 29, 1959, counsel entered appearances for Chronicle Publishing Company (KRON-TV); American Broadcasting-Paramount Theatres, Inc. (KGO-TV); Westinghouse Broadcasting Company, Inc. (KPIX); Department of Defense; Federal Aviation Agency; and the Broadcast Bureau, Federal Communications Commission. Because of the possibility that certain information involved in this proceeding may be classified, all counsel agreed that the hearing in this proceeding now scheduled for September 28, 1959, should be continued indefinitely (Tr. 59). It was also further understood and agreed that the motion for extension granted in a Memorandum Opinion and Order dated July 20, 1959, which was to be in effect until the prehearing conference on July 29, 1959, should remain in effect indefinitely (Tr. 62).

Accordingly it is ordered, This 5th day of August 1959, that the hearing in this proceeding now scheduled for September 28, 1959 be, and the same is hereby,

continued without date.

It is further ordered, That the "Motion for Extension" granted by Memorandum Opinion and Order dated July 20, 1959, effective until July 29, 1959, shall remain in effect until further order in respect thereto of the Hearing Examiner.

Released: August 5, 1959.

FEDERAL COMMUNICATIONS COMMISSION, MARY JANE MORRIS,

[SEAL] Secretary.

/[F.R. Doc. 59-6610; Filed, Aug. 10, 1959; 8:50 a.m.]

> No. 156----8

[Docket No. 12309; FCC 59M-1002]

VIDEO INDEPENDENT THEATRES, INC. (KVIT)

Notice of Prehearing Conference

In re application of Video Independent Theatres, Inc. (KVIT), Santa Fe, New Mexico, Docket No. 12309, File No. BMPCT-4586; for modification of construction permit.

To discuss proceedings following the Commission's Memorandum Opinion and Order released today, a prehearing conference will be held on Wednesday, September 9, 1959, at 10:00 a.m., in the offices of the Commission, Washington, D.C.

Dated: August 4, 1959.

[SEAL]

Released: August 5, 1959.

Federal Communications COMMISSION, MARY JANE MORRIS,

Secretary. [F.R. Doc. 59-6611; Filed, Aug. 10, 1959; 8:50 a.m.]

[Docket No. 12939; FCC 59M-1006]

WPGC, INC. (WPGC)

Order Scheduling Prehearing Conference

In re application of WPGC, Inc. (WPGC), Morningside, Maryland, Docket No. 12939, File No. BML-1790, for modification of license.

It is ordered, This 5th day of August 1959, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of § 1.111 of the Commission's rules at 10:00 o'clock a.m., September 25, 1959, in the Commission's offices, Washington, D.C.

Réleased: August 6, 1959.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

MARY JANE MORRIS, Secretary.

[F.R. Doc. 59-6612; Filed, Aug. 10, 1959; 8:50 a.m.1

FEDERAL POWER COMMISSION

[Project No. 2225]

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASH-INGTON AND SULLIVAN CREEK **POWER PROJECT**

Notice of Land Withdrawal; Washington

AUGUST 5, 1959.

Conformable to the provisions of section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United

States, are included in power project No. 2225 for which completed application for license was filed May 31, 1957. Under said section 24 all lands of the United States lying within the boundaries of the project, as delimited upon the maps filed in support thereof, are from said date of filing reserved from entry, location or other disposal under the laws of United States until otherwise the Commission or by directed by Congress.

WILLAMESER MERIDIAN

T. 38 N., R. 43 E., Sec. 12: Lots 1 and 2 T. 39 N., R. 43 E.

Sec. 24: SE¼SE¼; Sec. 25: N½NE¼, NE¼SE¼NE¼, N½ NW¼, SW¼NW¼, N½N½SE¼NW¼; Sec. 26: NE¼NE¼, S½NW¼NE¼.

T. 38 N., R. 44 E., Sec. 5: Lot 4:

Sec. 6: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9; Sec. 7: Lots 1, 2, 3, 4, 5, 6, 7, 8;

Sec. 18: Lots 1, 2, 3, 4, 5, 6, 7, 9, S1/2SE1/4.

T. 39 N., R. 44 E., Sec. 30: Lots 3, 4, 5, 7, E½NW¼, NE¼

SW14, SW14SE14; Sec. 31: Lots 3, 4, 5, 6, 9, NW14NE14; Sec. 32: Lots 1, 2 NE1/4NW1/4, W1/2NW1/4.

The area reserved, pursuant to the filing of this application, is approximately 519.33 acres all within the boundaries of the Colville National Forest.

Copies of map "Exhibits K" sheets 1, 2, and 3 (F.P.C. Nos. 2225-1, 2 and 3, respectively), originally filed May 31, 1957, as amended and refiled April 29, 1959, are being transmitted to the Bureau of Land Management, Forest Service and Geological Survey.

> JOSEPH H. GUTRIDE, Secretary.

[F.R. Doc. 59-6581; Filed, Aug. 10, 1959; 8:46 a.m.]

[Docket No. G-12977]

M. ASCHER AND JOSEPH G. SELLWOOD

Notice of Application and Date of Hearing

AUGUST 4, 1959.

Take notice that on July 29, 1957, M. Ascher, Individually and as Trustee (Ascher) and Joseph G. Sellwood (Sellwood), filed a joint application in Docket No. G-12977, pursuant to section 7 of the Natural Gas Act, for:

- (1) Ascher to abandon service to Arkansas Louisiana Gas Company (Arkla) from certain acreage in the Rodessa Field, Caddo Parish, Louisiana, covered by a sales contract dated April 9, 1954, previously accepted for filing as M. Ascher, et al., FPC Gas Rate Schedule No. 3.
- (2) Sellwood to continue the service proposed to be abandoned herein.

The foregoing requests are more fully described in the application on file with the Commission, and open to public inspection.

The application recites that by instrument of assignment, effective as of July 26, 1957, Sellwood acquired all of the interest of Ascher in the leases, together with all of the interest of Ascher in the wells and other facilities utilized in the production and delivery of natural gas subject to the terms and provisions of the April 9, 1954 sales contract. Ascher was authorized on November 30, 1955, in Docket No. G-8344 to render the service now proposed to be abandoned.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations, and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on September 22, 1959, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 8, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

Joseph H. Gutride, Secretary.

[F.R. Doc. 59-6582; Filed, Aug. 10, 1959; 8:46 a.m.]

[Docket No. G-16198]

SHARPLES OIL CORP.

Notice of Application and Date of Hearing

AUGUST 4, 1959.

Take notice that on September 2, 1958, The Sharples Oil Corporation (Applicant), a Delaware corporation with a principal office in Denver, Colorado, filed an application in Docket No. G-16198, pursuant to section 7(b) of the Natural Gas Act, for authorization to abandon its sale of casinghead gas to Barnhart Hydrocarbon Corporation (Barnhart), from Applicant's 151.05 acre University of Texas Lease in the Barnhart Field, Reagan County, Texas, covered by a contract dated May 1, 1950, as supplemented, between Applicant and Barnhart, amending an earlier contract dated No-

vember 13, 1947, between Applicant and W. F. McDonald, all as more fully described in the application on file with the Commission and open to public inspection.

The application recites that Barnhart purchases natural gas from producers in the field, processes the gas in its gasoline plant in Reagan County, Texas, and sells the residue gas therefrom to El Paso Natural Gas Company. Applicant states that the reserves underlying the aforementioned lease are now depleted.

The applicant was authorized on September 24, 1956, in Docket No. G-6079 to render the service to Barnhart now proposed to be abandoned.

This matter is one that should be disposed of as promptly as possible under. the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on September 22, 1959, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 8, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

Joseph H. Gutride, Secretary.

[F.R. Doc. 59-6583; Filed, Aug. 10, 1959; 8:46 a.m.]

[Docket Nos. G-16164, G-16165]

SOUTHWEST NATURAL PRODUCTION CO.

Notice of Applications and Date of Hearing

AUGUST 4, 1959.

Take notice that on August 28, 1958, Southwest Natural Production Company (Applicant), a Delaware corporation with a principal office in Shreveport, Louisiana, filed applications in Docket Nos. G-16164 and G-16165, pursuant to section 7 of the Natural Gas Act, for:

(1) In Docket No. G-16164, to abandon service to Mississippi River Fuel Corporation (Mississippi) from the L. M. Martin No. 1 James Lime Unit in the

Ruston Field, Lincoln Parish, Louisiana, covered by a sales contract dated April 24, 1950, as amended, on file as Southwest Natural Production Company FPC Gas Rate Schedule No. 3.

(2) In Docket No. G-16165, to render service to Arkansas Louisiana Gas Company (Arkansas Louisiana) from the L. M. Martin No. 1 James Lime Unit, Lincoln Parish, Louisiana, covered by a sales contract dated July 23, 1958, between Applicant and Arkansas Louisiana.

The foregoing requests are more fully described in the applications on file with the Commission, and open to public inspection,

Applicant states (1) in Docket No. G-16164, that the unit well is no longer capable of delivering into Mississippi's line because of declining well pressure and that, therefore, Applicant negotiated its contract of July 23, 1958 with Arkansas Louisiana whose line operates at a lower pressure and is thus able to take Applicant's 11.987 percent in production from the unit, and (2) by letter dated July 15, 1958, Mississippi released the five leases comprising the subject unit insofar as they cover production from the James Lime Formation.

Applicant further states it was authorized in Docket No. G-7229 to render, among other services, the sale of natural gas to Mississippi from the aforementioned five leases, in addition to other acreage dedicated to said purchaser under Applicant's contract of April 24, 1950, as amended.

This matter is one that should be disposed of an promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on September 22, 1959, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnec-essary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 8, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

Joseph H. Gutride, Secretary.

[F.R. Doc. 59-6584; Filed, Aug. 10, 1959; 8:46 a.m.]

[Docket No. G-8288 etc.]

SUN OIL CO. ET AL. Notice of Hearing

JULY 30, 1959.

In the matters of Sun Oil Company, Docket Nos. G-8288, G-12841, G-12880, G-13316, G-13444, G-13585, G-13617, G-13618, G-13664, G-13937, G-15010, G-15016, G-15450, G-15633, G-15743, G-16257, G-16396, G-16410, G-16621, G-16624, G-16684, G-16686, G-16700, G-16810, G-17274, G-17346, G-17717, G-18094, G-18353; Sun Oil Company (Operator) et al., Docket Nos. G-13425, G-13619, G-15011, G-15632, G-15768, G-16258, G-16622, G-16685, G-16699, G-17354, G-17923; Sun Oil Company et al., Docket No. G-13426.

Notice is hereby given that the hearing in the above-designated matters, postponed by notice issued June 17, 1959, will be convened to be held at 10:00 a.m., e.d.t., September 15, 1959, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

> JOSEPH H. GUTRIDE, Secretary.

[F.R. Doc. 59-6585; Filed, Aug. 10, 1959; 8:46 a.m.]

[Docket No. G-17244]

TEXAS CO.

Notice of Application and Date of Hearing

AUGUST 4, 1959.

In the matter of the Texas Company, now Texaco Inc.; Docket No. G-17244. Take notice that on December 12, 1958, The Texas Company 1 (Applicant), a Delaware corporation with a principal office in Houston, Texas, filed an application in Docket No. G-17244, pursuant to section 7 of the Natural Gas Act, for authorization to abandon service to Tennessee Gas Transmission Company (Tennessee) from the West Ace Field, Polk County, Texas, covered by a contract dated November 3, 1953, on file as The Texas Company FPC Gas Rate Schedule No. 95, all as more fully described in the application on file with the Commission and open to public inspection.

In support of the proposed abandonment of service, Applicant states (1) that its one well in the West Ace Field, Polk County, Texas, was last produced in February 1956 and that the well was subsequently worked over and the gas reservoir sealed off because the gas reserves were exhausted, and (2) it was authorized on December 5, 1955, in Docket No. G-4820 to render the subject service in addition to other sales of natural gas to Tennessee and other purchasers from other fields.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and

Take further notice that, pursuant to the authority contained in and subject

to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on September 22, 1959, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: Provided, however, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 8, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

> JOSEPH H. GUTRIDE. Secretary.

[F.R. Doc. 59-6586; Filed, Aug. 10, 1959; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

BANK STOCK CORPORATION OF MILWAUKEE

Notice of Tentative Decision for Prior Approval of Formation of Bank Holding Company

Notice is hereby given that, pursuant to section 3(a) of the Bank Holding Company Act of 1956 ("the Act"), Bank Stock Corporation of Milwaukee, Milwaukee, Wisconsin, has applied for the Board's prior approval of action whereby Bank Stock Corporation of Milwaukee would become a bank holding company through the acquisition of 80 percent or more of the outstanding voting shares of Marshall and Ilsley Bank, Milwaukee, Wisconsin and of Northern Bank, Milwaukee, Wisconsin. Information contained in the application and other information relied upon by the Board in making its tentative decision on the application are summarized in the Board's Tentative Statement of this date, which is attached hereto and made a part hereof,2 and is on file with the Federal Register Division and available for inspection at the office of the Board's Secretary and at the Federal Reserve Banks.

The record in this proceeding to date consists of the application, the Board's letter to the Commissioner of Banks of the State of Wisconsin inviting his views and recommendations on the application, the reply of the Commissioner, this Notice of Tentative Decision, and the

facts set forth in the Board's Tentative Statement.

For the reasons set forth in the Tentative Statement, the Board proposes to grant the application.

Notice is further given that any interested person may, not later than fifteen (15) days after the publication of this notice in the Federal Register, file with the Board in writing any comments on or objections to the Board's proposed action, stating the nature of his interest. the reasons for such comments or objections, and the issues of fact or law, if any, presented by said application which he desires to controvert. Such statement should be addressed: Secretary, Board of Governors of the Federal Reserve System, Washington 25, D.C.

Following expiration of the said 15day period, the Board's Tentative Decision will be made final by order to that effect, unless for good cause shown other action is deemed appropriate by the Board and is so ordered.

Dated at Washington, D.C., this 4th day of August 1959.

By the Board of Governors.

MERRITT SHERMAN, [SEAL] Secretary.

[F.R. Doc. 59-6587; Filed, Aug. 10, 1959; 8:47 a.m.]

MARINE CORP.

Notice of Tentative Decision on Application by Bank Holding Company for Prior Approval of Acquisition of Voting Shares of a Bank

Notice is hereby given that, pursuant to section 3(a) of the Bank Holding Company Act of 1956, The Marine Corporation, Milwaukee, Wisconsin, a bank holding company has applied for the Board's prior approval of action whereby said bank holding company would acquire 80 percent or more of the outstanding voting shares of Pewaukee State Bank, Pewaukee, Wisconsin. Information contained in the application and other information relied upon by the Board in making its tentative decision are summarized in the Board's Tentative Statement of this date, which is attached hereto and made a part hereof * and is on file with the Federal Register Division and available for inspection at the Office of the Board's Secretary and at all Federal Reserve Banks.

The record in this proceeding to date consists of the application, the Board's letter to the Commissioner of Banks of the State of Wisconsin inviting his views and recommendations on this application, the reply of the Commissioner, this Notice of Tentative Decision and the facts set forth in the Board's Tentative

Statement.

For the reasons set forth in the Tentative Statement, the Board proposes to grant the application.

Notice is further given that any interested person may, not later than fifteen (15) days after the publication of this notice in the FEDERAL REGISTER, file with the Board in writing any com-

¹ Now Texaco Inc.

^{*}Filed as part of the original document.

ments on or objections to the Board's proposed action, stating the nature of his interest, the reasons for such comments or objections, and the issues of fact or law, if any, presented by said application which he desires to controvert. Such statement should be addressed: Secretary, Board of Gover-nors of the Federal Reserve System, Washington 25, D.C.

Following expiration of the said 15-day period, the Board's Tentative Decision will be made final by order to that effect, unless for good cause shown other action is deemed appropriate by the Board and

is so ordered.

Dated at Washington, D.C., this 4th day of August 1959.

By the Board of Governors.

[SEAL]

MERRITT SHERMAN. Secretary.

[F.R. Doc. 59-6588; Filed, Aug. 10, 1959; 8:47 a.m.1

DEPARTMENT OF JUSTICE

Office of Alien Property STATE OF THE NETHERLANDS ET AL. Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of: Seigniory Stockum and Hericke Markelo, Province of Overijssel, The Netherlands; L.S. Claim No. 1036; \$2,560.00 in the Treasury of the United States. Vesting Order No.

Executed at Washington, D.C., on August 4, 1959.

For the Attorney General.

[SEAL]

PAUL V. MYRON, Deputy Director, Office of Alien Property.

[F.R. Doc. 59-6597; Filed, Aug. 10, 1959; 8:48 a.m.1

VEREINIGTE CHEMISCHE FABRIKEN KREIDL, RUTTER & CO.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D.C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Vereinigte Chemische Fabriken Kreidl, Rutter & Co., Vienna, Austria; Claim No. 598; All right, title and interest in and to United States Trademark Registration Nos. 295,052 for "GTM-Kreidl" and 295,053 for "Gasopak" together with: (1) the respective good will of the business in the United States and all its possessions to which said trade-marks are appurtenant; (2) any and all indicia of such good will (including but not limited to formulae whether secret or not, secret processes, methods of manufacture and procedure, customers lists, labels, machines and other equipment); (3) any interests of any nature whatsoever in and any rights and claims of every character and description to said business, good will and trade-marks and all registrations thereof; and (4) all accrued royalties payable or held with respect to such trade-marks and all damages and profits recoverable at law or in equity from any person, firm, corporation or government for past infringement thereof. Vesting Order No.

Executed at Washington, D.C. on August 4, 1959.

For the Attorney General.

[SEAL]

Deputy Director, Office of Alien Property.

[F.R. Doc. 59-6598; Filed, Aug. 10, 1959; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice No. 165]

MOTOR CARRIER TRANSFER **PROCEEDINGS**

AUGUST 6, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62272. By order of July 31, 1959, the Transfer Board approved the transfer to Helen Colonnelli and Raymond Collonnelli, doing business as John Santini Vans Co., New York, N.Y., of Certificate No. MC 21479, issued February 2, 1956, to Benjamin Edelstein, doing business as Alabama Moving & Storage Co., Brooklyn, N.Y., authorizing the transportation of: Household goods, as defined, between New York, N.Y., on the one hand, and, on the other, points in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, and between New York, N.Y., on the one hand, and, on the other, points in Delaware, Maryland, Ohio, Virginia, and the District of Columbia. Edward M. Alfano, 36 West 44th Street.

New York 36, N.Y., for applicants. No. MC-FC 62330. By order of July 31, 1959, the Transfer Board approved the transfer to Electric City Movers, Inc., Plattsburg, N.Y., of Certificate in No. MC 85100, issued July 12, 1957, to Homer Moving and Storage Co., Inc., Plattsburgh, N.Y., authorizing the transportation of: Household goods, between specified points in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin. John J. Brady, Jr., 75 State Street, Albany, N.Y., for applicants.

No. MC-FC 62351. By order of July 31, 1959, the Transfer Board approved the transfer to Daniel A. Stoud, doing business as Stoud Coal Sales, Shamokin, Pa., of a portion of certificate in No. MC 82009, issued June 16, 1949, to Homer G. Keister, Selinsgrove, Pa., authorizing the transportation of: Coal from Shamokin, Pa., to Baltimore, Md. Pierce Allen Coryell, Attorney, 119-121 North Market Street, Selinsgrove, Pa.

No. MC-FC 62414. By order of July 31, 1959, the Transfer Board approved the transfer to Norman H. Clemmer, Souderton, Pennsylvania, of a portion of Certificate in No. MC 82074, issued April 18, 1955, to Robert C. Kulp, doing business as Robert C. Kulp Motor Freight, Souderton, Pennsylvania, authorizing the transportation of household goods, as defined by the Commission, over irregular routes, between Souderton, Pa., and points in Pennsylvania within 10 miles of Souderton, on the one hand, and, on the other, points in New Jersey and New York. John W. Frame, 603

North Front Street, Harrisburg, Pa. No. MC-FC 62420. By order of July 31, 1959, the Transfer Board approved the transfer to Soo Security Motorways Limited of Winnipeg, Manitoba, Canada, of Certificate No. MC 110948 issued May 20, 1958, in the name of Soo Security Freight Lines Limited, of Regina, Saskatchewan, Canada, authorizing transportation of general commodities, excluding household goods, commodities in bulk, and various specified commodities, between Portal, N. Dak., and the Canada at Portal. Harold G. Hernly, 1624 Eye Street NW., Washington 6, D.C. No. MC-FC 62421. By order of July

31, 1959, the Transfer Board approved the transfer to Motorways (Ontario) Limited, of Toronto, Ontario, Canada, of Certificate No. MC 109948, issued November 16, 1949, and acquired by Motorways Limited of Toronto, Ontario, Canada, pursuant to proceeding approved August 18, 1958, in MC-F 6700, for authority to transport over irregular routes, fresh or green grapes, from the boundary of the United States and Canada at Niagara Falls, and Buffalo, N.Y., to North East, Pa., and Westfield, Brockton, and Silver Creek, N.Y.; and grape juice in containers, from North East, Pa., Westfield, Brockton, and Silver Creek, N.Y., to the boundary of the United States and Canada at Niagara Falls and Buffalo. Harold G. Hernly, 1624 Eye Street NW., Washington 6, D.C.

No. MC-FC 62432. By order of July 31, 1959, the Transfer Board approved the transfer to Savin Hill Movers, Inc., Quincy, Massachusetts, of the operating rights in Certificate No. MC 3844, issued August 27, 1958, to Bartholomew P. Caggiano, doing business as Savin Hill Movers, Quincy, Massachusetts, authorizing the transportation, over irregular routes, of household goods, between Boston, Mass., and points in Massachusetts within 20 miles of Boston, on the one hand, and, on the other, points in Connecticut, New Hampshire, New York, Rhode Island, and Vermont. Francis E. Barrett, Jr., 7 Water Street, Boston 9, Mass. for applicants.

No. MC-FC 62433. By order of July 31, 1959, the Transfer Board approved the transfer to Savin Hill Movers, Inc., Quincy, Massachusetts, of the operating rights in Certificate No. MC 41068, issued March 30, 1956, to Kay Moving Service, Inc., New York, N.Y., authorizing the transportation, over irregular routes, of household goods, between New York, N.Y., on the one hand, and, on the other, points in Connecticut. Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island, and between Philadelphia, Pa., and points within 25 miles thereof, on the one hand, and, on the other, points in New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and the District of Columbia, and potted flowers and plants, from Norwood, Pa., to Wilmington, Del., and New York, N.Y. Francis E. Barrett, Jr., 7 Water Street, Boston 9, Mass., for applicants.

No. MC-FC 62434. By order of July 31, 1959, the transfer Board approved the transfer to Charles W. Young, Jr., George S. Young, Meredith Diana Young (Burton C. Willis, Jr. and Frank K. Dutcher, Jr., Trustees), Gilbert W. Young, Charles W. Young, and Elsie Y. Focht, a partnership, doing business as George Young Company, of Philadelphia, Pa., of Certificate No. MC 3091 issued September 16, 1949 in the name of Gilbert W. Young, Charles Young, and Charles N. Cooper, a partnership, doing business as George Young Company, of Philadelphia, Pa., authorizing the transportation over irregular routes of uncrated machinery and articles requiring specialized handling or rigging because of size or weight, between points in a specified part of Pennsylvania, on the one hand, and, on the other, Franklin and Boston, Mass., and points within 10 miles of Boston; those in that part of Connecticut on and south of U.S. Highway 1; those in Delaware, Maryland, New Jersey, and the New York, N.Y. Commercial Zone, points in New York within 50 miles of the New York, N.Y. Commercial Zone, and those in the District of Columbia; and uncrated machinery, between Mt. Vernon, N.Y., and Kenilworth and Elizabeth, N.J., on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, and the District of Columbia. Peter P. Zion, 225 South 15th Street, Philadelphia 2, Pa., for applicants.

No. MC-FC 62439. By order of July 31, 1959, the Transfer Board approved the transfer to Transportation Insurance Agency, Inc., Harrisburg, Pennsylvania, of a portion of Certificate in No. MC 82074, issued April 18, 1955, to Robert C. Kulp, doing business as Robert C. Kulp Motor Freight, Souderton, Pennsylvania, authorizing the transportation of general commodities, excluding household goods, as defined by the Commission, and commodities in bulk, over irregular routes, between Philadelphia, Pa.. on the one hand, and, on the other, points in Montgomery and Bucks Counties, Pa. John W. Frame, 603 North

Front Street, Harrisburg, Pa. No. MC-FC 62436. By order of August 6, 1959, the Transfer Board approved the transfer to W. T. Robinson & Son Trucking Contractors, Inc., 1725 West Golden, Tulsa, Okla., of Certificate No. MC 64846, issued December 23, 1941, to Stanley W. Henson, 309 West Tenth Street., Bristow, Okla., authorizing the transportation of: Machinery, materials, supplies, and equipment, incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in Oklahoma, Kansas, and that part of Texas on and north of U.S. Highway 66.

No. MC-FC 62447. By order of July 31, 1959, the Transfer Board approved the transfer to Norman C. Mesler of Bolivar, N.Y., of Certificate No. MC 109097 issued December 9, 1948, in the name of R. B. Moore Supply Co., Inc., of Bolivar, N.Y., authorizing the transportation of machinery, equipment, materials, and supplies used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, over irregular routes, between points in Allegany, Cattaraugus and Steuben Counties, N.Y.; and between points in Allegany, Cattaraugus and Steuben Counties, N.Y., on the one hand, and, Cattaraugus and Steuben on the other, points in Crasford, Erie, Lehigh, McKean, Potter, Warren, and Vanango Counties, Pa., and those in Medina County, Ohio. Floyd B. Piper, Crosby Building, Franklin Street at Mohawk, Buffalo 2, N.Y., for applicants.

ISEAL HAROLD D. MCCOY, Secretary.

[F.R. Doc. 59-6593; Filed, Aug. 10, 1959; 8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 6, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35611: Vegetable meal I.F.A. points to St. Louis, Mo., group. Filed by Illinois Freight Association, Agent (No. 71), for interested rail carriers. Rates on vegetable meal and related articles, carloads from points in Illinois territory to St. Louis, Mo., and East St. Louis, Ill.

Grounds for relief: Short-line distance formula and market competition. Tariff: Supplement 4 to Western Trunk Line Committee, Agent, tariff

I.C.C. A-4276.

FSA No. 35612: Substituted service-Rails for Midwest Haulers, Inc. Filed by Midwest Haulers, Inc., Agent (No. 15), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between New Haven, Conn., on the one hand, and Chicago, or East St. Louis, Ill., on the other, on traffic to or from points in territories described in the application.

Grounds for relief: Motor truck competition.

Tariff: Supplement 43 to Midwest Haulers, Inc., tariff MF-I.C.C. 21.

FSA No. 35613: Fertilizer-Idaho and Utah points to Colorado and Wyoming. Filed by Colorado-Utah Committee, Agent (No. 2), for interested rail carriers. Rates on fertilizer, dry, and fertilizer materials, in carloads from specified points in Idaho and Utah to points in Colorado and Wyoming.

Grounds for relief: Market competition short-line distance formula, and grouping.

Tariff: Supplement 114 to Colorado-Utah Committee tariff I.C.C. 26 and other schedules named in the application.

FSA No. 35614: Cast iron pressure pipe-Utah to Colorado and Wyoming. Filed by Colorado-Utah Committee, Agent (No. 3), for interested rail car-

riers. Rates on cast iron pressure pipe and fittings in carloads from Utah common points to points in Colorado and Wyoming.

Grounds for relief: Market and motor-truck competition.

Tariffs: Supplement 114 to Colorado-Utah Committee tariff I.C.C. 26 and other schedules named in the application.

By the Commission.

[SEAL]

HAROLD D. McCoy, Secretary.

[F.R. Doc. 59-6592; Filed, Aug. 10, 1959; 8:47 a.m.]

SMALL BUSINESS ADMINISTRA-

[Delegation of Authority 1 (Revision 4), Amdt. 5]

DEPUTY ADMINISTRATOR FOR ADMINISTRATION

Delegation of Authority Relating to Administration

Delegation of Authority No. 1 (Revision 4), as amended (22 F.R. 6540, 23 F.R. 2801, 8435, 10574, 24 F.R. 1730), is hereby further amended by deleting sub-

section I.B.19. in its entirety and substituting the following in lieu thereof:

I.B.19. To enter into contracts for supplies and services pursuant to Delegation of Authority No. 363, dated March 10, 1959 (24 F.R. 1921, 2096) from the Administrator of the General Services Administration to the Small Business Administration.

Effective date: March 17, 1959.

WENDELL B. BARNES, Administrator.

[F.R. Doc. 59-6469; Filed, Aug. 10, 1959; 8:45 a.m.]

CUMULATIVE CODIFICATION GUIDE—AUGUST

A numerical list of the parts of the Code of Federal Regulations affected by documents published to date during August. Proposed rules, as opposed to final actions, are identified as such,

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